

## **EXHIBIT 2**

DOE Commissioner  
Frank Edelblut  
Deposition  
Transcript  
Redacted, Publicly-  
filed

(Unredacted  
version has been  
filed under seal)

Local 8027

vs

Frank Edelblut

Docket No. 1:21-cv-01077-PB

FRANK EDELBLUT

May 23, 2023



**AVICORE REPORTING**

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UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE	1	INDEX	
<b>CERTIFIED ORIGINAL</b>	2	Deposition of Frank Edelblut	
Local 8027, AFT-New Hampshire, et al.,	3	Examination by Mr. Moerdler:	
Plaintiff,	4	Examination by Mr. Bissonnette:	
v.	5	EXHIBITS	
Frank Edelblut, Commissioner, et al,	6	38 Email, Edelblut to Farrell, Oct 26, 2021,	
Defendants.	7	DOE-00710-713	
No. 1:21-cv-01077-PB	8	39 Email, Edelblut to Farrell, Sept 21, 2022,	
DEPOSITION OF FRANK EDELBLUT taken on behalf of the Plaintiffs at New Hampshire Department of Education, Concord, New Hampshire, on May 23, 2023, at 10:20 a.m.	9	DOE-09896-09898	
Court Reporter: Cynthia Foster, LCR LCR #14 (RSA 310-A:161-181)	10	40 Email, DOE Communications Office to Edelblut, Oct 5, 2021, with attachments	
	11	41 Email, Edelblut to m41 hillsboroughnh, 15 Nov 2021, DOE-00871	
	12	42 Email, Edelblut to SAU 5, 17 Nov 2021,	
	13	DOE-00866-868	
	14	43 Email, Edelblut to Breen, 28 Dec 2021,	
	15	DOE-00848-849	
	16	44 Email, Andrus to Edelblut, 15 May 2022,	
	17	DOE-01136	
	18	45 Email, Sanborn to Edelblut, 20 Aug 2021,	
	19	DOE-00067-69	
	20	46 Email, Farrell to Fenton, 19 Aug 2022,	
	21	DOE-009900-9901, 10298-10299	
	22	129	
1 APPEARANCES: 2 On behalf of the Plaintiffs, Local 8027, AFT-New 3 Hampshire, AFL-CIO: 4 STROOCK & STROOCK & LAVAN LLP By: Charles Moerdler, Esq. Elizabeth C. Milburn, Esq. David Kahne, Esq., by Zoom 5 180 Maiden Lane New York, NY 10038 6 212-806-5648 cmoerdler@stroock.com ecmilburn@stroock.com 7 On behalf of the Plaintiffs, Christina 8 Philibotte, Andres Mejia, NEA-New Hampshire: 9 ACLU OF NEW HAMPSHIRE By: Gilles Bissonnette, Esq. 10 18 Low Avenue, Unit 12 Concord, NH 03301 11 603-225-3080 gilles@aclu-nh.org 12 On behalf of the Defendants, Frank Edelblut, 13 Ahni Malachi, John Formella, et al: NH DEPARTMENT OF JUSTICE By: Nathan W. Kenison-Marvin, Esq. 33 Capitol Street 14 Concord, NH 03301 603-271-1292 nathan.w.kenison-marvin@doj.nh.gov Also present: Elizabeth A. Brown, Attorney Department of Education Office of the Commissioner By Zoom: Peter Perroni, Esq. Nathan Fennelly, Esq., nfennelly@preti.com Morgan Nighan, Esq., mnighan@nixonpeabody.com Jennifer Eber, Esq. Kayla Turner, Esq., kaylat@drcnh.org. Esther Dickinson, Esq., edickinson@nhnea.org	2	4 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23



	9		11
1	BY MR. MOERDLER:	1	today?
2	Q Have you been deposed before, Commissioner?	2	A So I met with my counsel.
3	A I have.	3	Q Putting that aside, anything else?
4	Q Can you tell us under what circumstances and how	4	A I did not.
5	often if you can remember approximately?	5	Q Did you look at any documents?
6	A Yes. I was deposed about a month ago. For	6	A I did.
7	another lawsuit involving the State.	7	Q And can you tell us what they are?
8	Q And that is the only time?	8	A I was provided by my counsel a series of emails.
9	A No. I was deposed many, many years ago in	9	Q Do you have a list of those emails?
10	another party associated with a corporation.	10	A I do not.
11	Q You know that this is going to be a question and	11	MR. MOERDLER: Nate, can I get a list of
12	answer session where your answers are sworn and	12	the emails, please?
13	recorded. You have the same duty to tell the	13	MR. KENISON-MARVIN: To the extent there
14	truth as if you were in court. You understand	14	are documents that you reviewed specifically.
15	that, sir?	15	MR. MOERDLER: Yes.
16	A I do.	16	MR. KENISON-MARVIN: I'm not committing
17	Q I must go through this.	17	that he reviewed the entire list of emails. I
18	A I do know.	18	can talk to the witness about the emails that he
19	Q It's obligatory. Would you only provide verbal	19	reviewed prior to the deposition today.
20	answers to questions rather than shaking your	20	MR. MOERDLER: Can you do that, please?
21	head which is what most of us do most of the	21	MR. KENISON-MARVIN: We can talk about
22	time, but would you try and be responsive orally	22	that.
23	and verbally rather than just by motion?	23	MR. MOERDLER: What I would like to know is
	10		12
1	A I will.	1	what he reviewed as contrasted necessarily with
2	Q And if you do not answer, if you do not	2	what you've given him. He may not have had a
3	understand a question, please ask, and we'll be	3	chance to read all of them.
4	happy to try and oblige. If you do not ask to	4	MR. KENISON-MARVIN: I can represent to you
5	have a question reread, we will assume that you	5	that he has only been provided with documents
6	have understood it at least to the best of your	6	that are Bates stamped and have been provided to
7	ability and are prepared to answer it; is that	7	Plaintiff's counsel.
8	correct?	8	MR. MOERDLER: Perfect. If you could
9	A That's correct.	9	provide us the list though I would appreciate
10	Q Please do something I fail to do too often, and	10	it.
11	that is let me finish the question before you	11	Q Okay. Would you please tell us your educational
12	answer it even though you know where I'm going.	12	background, sir?
13	Is that all right?	13	A Sure. I have a bachelor of science degree and a
14	A That's all right.	14	master's degree.
15	Q And if you need any breaks we'll do whatever we	15	Q In what subject?
16	can to oblige you and accommodate that.	16	A Bachelor of science degree in business
17	Do you understand these requests or	17	administration with an emphasis in accounting,
18	instructions, sir?	18	and I have a master's degree in theology.
19	A I do.	19	Q And they are from?
20	Q And is there any reason you are unable to	20	A The University of Rhode Island is my
21	testify truthfully or completely today?	21	undergraduate degree, and my graduate degree is
22	A Not that I'm aware of.	22	from the Greek Orthodox School of Theology.
23	Q What did you do to prepare for this deposition	23	Q And would you tell us your work background? If

	13		15
1	you can. As completely as you can. In other	1 A	I'm nominated, and then I go through a
2	words, your employment background prior to	2	confirmation process with the Governor and
3	becoming Commissioner?	3	counsel.
4 A	Sure. I was initially out of college so I'll	4 Q	Who nominated you?
5	start there. I'm sure you don't want to know	5 A	The Governor.
6	when I start working or before that.	6 Q	The Governor nominated you, and then you go to
7	I was an accountant for the firm of	7	the confirmation process; is that correct?
8	PriceWaterhouseCoopers. I left there. I was	8 A	That's correct.
9	the Chief Financial Officer for a company called	9 Q	That was as of when?
10	Niagara Corporation. I left there. I started a	10 A	In March of 2017, I believe.
11	company called Control Solutions. I exited that	11 Q	And you have been the Commissioner of Education
12	company and was a member of an early stage	12	since that time?
13	investing group called Common Angels which then	13 A	That's correct.
14	ultimately changed its name to Converge Systems.	14 Q	Could you describe your responsibilities as the
15	And so that's my professional career.	15	Commissioner of Education for New Hampshire?
16 Q	And then did there come a point where you ceased	16 A	Sure. So I have oversight responsibility for
17	to be primarily occupied in a professional	17	the agency that comprises the New Hampshire
18	career? In other words, I believe I'm correct	18	Department of Education. Many of those
19	in stating you became at some point in time a	19	responsibilities are enumerated in statute.
20	member of the New Hampshire House of	20 Q	Would you tell us in your own words what are
21	Representatives. Am I right?	21	those responsibilities, whether they are
22 A	That's correct.	22	oversight of the agency or individually,
23 Q	So was that your first, as somebody who's been	23	separately and apart?
	14		16
1	down this road, your first adventure into the	1 A	I'm not sure I understand the question.
2	world of politics and government?	2 Q	Tell me what it is that you are charged with
3 A	So what I would say is that in New Hampshire	3	actually doing in the area of education.
4	participation as a State Representative is not a	4	MR. KENISON-MARVIN: Objection. Calls for
5	vocational calling such that it would be the	5	a local contention, you can answer.
6	professional career in the sense that State	6	MR. MOERDLER: Sorry?
7	Representatives in New Hampshire earn only \$100	7	MR. KENISON-MARVIN: Object to the extent
8	per year so it would be difficult to make that a	8	it calls for a legal contention. He can answer.
9	vocational endeavor.	9	MR. MOERDLER: All I want to know is what
10 Q	So were you doing that at the same time that you	10	he does.
11	were engaged in some other occupation?	11 A	So I have oversight responsibility for the
12 A	Yes.	12	agency.
13 Q	And what was the other occupation while you were	13 Q	And what does the agency do?
14	doing that?	14 A	So the agency has a variety of activities.
15 A	I was a member with Common Angels.	15	Probably one of the easiest places to understand
16 Q	And when did you first become a member of the	16	many of those is in statute. Particularly in
17	House of Representatives?	17	RSA 21:10 I believe is the statute.
18 A	I believe in the 2014 time frame.	18 Q	Does your agency have responsibility for the
19 Q	And you then became Commissioner directly from	19	public school system in the State of New
20	your service as a member of the House of	20	Hampshire?
21	Representatives; is that correct?	21 A	I'm not sure I understand what you mean by
22 A	That's correct.	22	responsibility for them.
23 Q	And were you appointed?	23 Q	Does it have any responsibility for the public

	17		19
1	school system?	1	question. The Department is responsible for
2	MR. KENISON-MARVIN: Objection. Vague and	2	administering those statutes and rules as
3	legal contention. You can answer.	3	they're enumerated.
4	A So the New Hampshire Department of Education has	4	Q And when you act in an official capacity, do you
5	responsibility for administering the statutes,	5	make a conscious effort to do no more than the
6	many of which govern aspects of the education	6	statute authorizes you as Commissioner to do?
7	system in New Hampshire, both public, nonpublic	7	A So we as an agency attempt to act consistent
8	and other educational programs.	8	with the statutes and the rules which govern our
9	Q So you do have responsibility, for example, of	9	activities.
10	the charter schools.	10	Q And do you have anyone who counsels you as to
11	A I don't know what you mean by "responsibility."	11	whether something is within or not within the
12	Q You have some jurisdictional responsibilities.	12	scope of those statutes?
13	A We have certain statutes that effect charter	13	A We do as an agency.
14	schools, and we're responsible, some of those	14	Q And that is?
15	statutes are our responsibility that we	15	A It's a variety of people.
16	administer.	16	Q And they are?
17	Q All right. Now, in terms of private schools, do	17	A So we have legal counsel, we have an Attorney
18	you have the same kind of areas of	18	General's office, we have legislators, and there
19	responsibilities?	19	may be others in the agency who observe a
20	A We have areas of responsibility, but they are	20	particular statute and may weigh in on whether
21	not the same. They as well, you know, are	21	or not the activities of the agency are within
22	enumerated in statute and rule and we administer	22	the scope of those.
23	the statutes and the rules.	23	Q And you make a conscious effort to stay within
	18		20
1	Q Do you try to stay jurisdictionally within the	1	those areas; is that correct?
2	four Corners of those statutes that govern your	2	MR. KENISON-MARVIN: Objection. Vague.
3	responsibilities?	3	A The agency administers the statutes and not
4	MR. KENISON-MARVIN: Objection, vague and	4	beyond the statutes.
5	legal contention.	5	Q Right. That's all I wanted to know.
6	Q Let me restate it then. You've indicated in	6	Now, you meet with parents from time to
7	your testimony that your responsibilities are	7	time, do you not?
8	essentially those that are within the four	8	A I do.
9	corners of a variety of statutes, correct?	9	Q And --
10	A I'm not sure I understand the question at this	10	A Can you just define what you mean by "meet"?
11	point.	11	Just so that we understand.
12	Q I'll restate it again. You've testified that in	12	Q That's the expression you've used in a number of
13	response to my question as to what is your	13	the emails.
14	responsibility, what are your responsibilities	14	A So I'm just trying to understand what you mean
15	as Commissioner, you've said they are oversight	15	by that.
16	of those areas as to which statute defines	16	Q I think I use the English language pretty well,
17	responsibilities; is that correct?	17	sir. Have you been trained in it. Do you get
18	A So statute and rule.	18	together with them?
19	Q Statute and rule. Now, within that area, do you	19	A So physically present, on a Zoom call, on a
20	try to keep your activities within the confines	20	telephone, can I just understand what you mean
21	of that statutory scheme or rule scheme,	21	by meet.
22	regulatory scheme?	22	Q Do you communicate in an oral capacity with
23	A So I'm not sure I understand the premise of the	23	parents from time to time?

	21		23
1 A	I do.	1	MR. MOERDLER: I'm sorry.
2 Q	Do you communicate with parents in writing from	2	MR. KENISON-MARVIN: We're up to 38, I
3	time to time?	3	think.
4 A	I do.	4	(Exhibit 38 marked for identification)
5 Q	Is there any other means by which you	5 Q	I will come back to the specifics of that
6	communicate with parents?	6	meeting in a moment. My question to you is here
7 A	I'm not sure, again, what you mean by	7	is --
8	communication. If I'm communicating with	8 A	Might I read through the document first?
9	someone --	9 Q	Oh, sure. Please. Perhaps you'll read through
10 Q	Sir, all I'm trying to do is get an answer to a	10	0713.
11	very simple question. You've pointed me down	11 A	Okay. So your question, sir?
12	this road by telling me you didn't comprehend	12 Q	[REDACTED]
13	the word "meet" so I'm going to take all the		[REDACTED]
14	component parts of the word "meet," and I'm		[REDACTED]
15	going to ask you those.	15 Q	Who is she? Do you know that?
16 A	Thank you.	16	MR. KENISON-MARVIN: Objection. Compound.
17 Q	I do try to do it as politely as I know how.	17	You can answer.
18 A	Yes. So I communicate with parents.	18	MR. MOERDLER: I'm sorry?
19 Q	All right. Do you communicate with school	19	MR. KENISON-MARVIN: Compound. Form.
20	officials?	20 Q	Do you know her?
21 A	I do.	21 A	I've spoken to her.
22 Q	Superintendents?	22 Q	Have you met with her?
23 A	Yes.	23 A	No. I've not met with her.
	22		24
1 Q	Principals?	1 Q	Now, what I would like to just go through with
2 A	Yes.	2	you is this apparently, I say apparently, if you
3 Q	People in the administrative area of schools?	3	look at page 0712, [REDACTED]
4 A	Yes.	4	communicated with you concerning an issue at
5 Q	When you do that, do you prepare some form of	5	Kensington Elementary SAU 16, and you indicated
6	written report for yourself or reminder or memo	6	at the top of page 0712 that your memory was
7	as a matter of course in what you did or what	7	refreshed, and you know the issue and spoke with
8	you're going to do?	8	the superintendent.
9 A	As a matter of course, no.	9	Can you give us your best present
10 Q	Now, do you meet with political party officials?	10	recollection of what that issue was?
11 A	I have.	11 A	Sure. So my memory was refreshed because I did
12 Q	All right. Give me just a moment. I'm trying	12	not recall what SAU she was involved in, and I
13	to find a document. I do apologize, sir.	13	believe that [REDACTED], the parent of a student as
14	So I'm going to show you a document that	14	she expressed in the initial email dated
15	has been Bates numbered by the Attorney	15	September 30th, was concerned about the content
16	General's office in producing it to us. It's	16	of a reading book in her daughter's classroom.
17	document numbered 0711. It is a portion of the	17 Q	And upon receiving this information, you spoke
18	production covering additional pages to that.	18	to the superintendent of SAU 16?
19	If you'll look at page 0711 it is led by 0700 as	19 A	That's correct.
20	a memo or an email from you to a man by the name	20 Q	And do you have any recollection at all as to
21	of [REDACTED] with a copy to Diana Fenton.	21	what you said to the superintendent and what he
22	MR. KENISON-MARVIN: Objection.	22	said to you or she said to you?
23	Foundation. Can we mark this?	23 A	I don't have specifics in terms of what the

	25		27
1	content of that conversation was. I can try	1	fidelity to the law.
2	to --	2	Q Do you do it personally or do you delegate it?
3	Q Give me your best present recollection.	3	MR. KENISON-MARVIN: Same objection.
4	A Yes. So my recollection would be that I would	4	A I would say as a Commissioner I am both doing
5	point out that there is a parent of a student in	5	activities as well as delegating activities.
6	the district who is concerned about a particular	6	Q Now, here is a parent who has complained about a
7	reading material in her classroom.	7	book, and I will go into that book in a little
8	Q And you communicated to that superintendent that	8	while. What is your normal reaction, if there
9	concern; am I correct?	9	is a normal reaction, when a parent complains
10	A I believe so.	10	about a book, do you pick up the book and try
11	Q Did you give the superintendent any counsel as	11	and read it? Do you find out what the issue is?
12	to what he or she should or shouldn't do in	12	What is the norm?
13	regard thereto?	13	A So it would depend on the circumstances of the
14	A I don't recall any specific counsel.	14	individual inquiry into the Department.
15	Q Do you know what the superintendent said to you?	15	Q Let's take a look at the query.
16	A I don't recall what the superintendent said to	16	A Okay.
17	me.	17	Q The query is on page 713. What was it in that
18	Q And do you remember reading the book?	18	query that triggered you to read the book?
19	A I do.	19	A Because I had a concerned parent.
20	Q Do you know what the book was?	20	Q So that was my question. When you have a
21	A I may be able to recollect from --	21	concerned parent, do you then try and get to the
22	Q Perhaps I can help you, sir.	22	bottom of the concern, communicate the concern,
23	A Okay.	23	and try and find out exactly what's involved?
	26		28
1	Q This is a book called A Good Kind of Trouble.	1	MR. KENISON-MARVIN: Objection. Compound.
2	A Okay.	2	You can answer.
3	Q And do you remember reading it?	3	A So --
4	A I do recall reading it. I read a number of	4	Q I'm happy to break it down.
5	books. I don't remember the details of the	5	MR. KENISON-MARVIN: I guess I would ask
6	book.	6	that we do it one question at a time if we can
7	Q What I'm really trying to get at, sir, and I'm	7	as a matter of course.
8	trying to simplify it, if not I can go back into	8	Q I'm trying to do that.
9	the depths of it, would it be fair to say that	9	A So again, depending on the individual inquiry to
10	you are an activist Commissioner, hands-on	10	me, I might take different pathways in terms of
11	Commissioner, who believes in dealing with those	11	trying to understand the context of the concern
12	people in those areas that you have	12	of the parent.
13	responsibility either by oversight or otherwise	13	Q So let me take you to that concern as expressed
14	responsibility for? Is that a fair statement?	14	on 0713.
15	MR. KENISON-MARVIN: Objection. Vague.	15	A Okay.
16	A So I would say that I am a Commissioner who	16	Q What was it in that concern that triggered you
17	tries to execute his responsibilities with	17	to read the book?
18	fidelity to the law and the rule.	18	A Because the parent had reached out to me.
19	Q Do you do that on an active basis or delegative	19	Q So when a parent reaches out to you and says
20	basis?	20	that he or she has a concern about a book and
21	MR. KENISON-MARVIN: Same objection.	21	gives you some details as here, is it your
22	A So again, I would say that I am a Commissioner	22	practice to then read the book?
23	who tries to execute his responsibilities with	23	A I do read quite a lot of content, yes.

<p style="text-align: right;">29</p> <p>1 Q And where in the statutes that you said marked 2 your responsibility is there one that says you 3 have a duty to read books?</p> <p>4 A So my duty is to support my customers to the 5 agency which include a variety of 6 constituencies. Parents are one of them. So I 7 try to be as prepared as possible to support my 8 constituencies.</p> <p>9 Q And then what was it that you did in terms of 10 calling and scheduling an appointment with the 11 superintendent?</p> <p>12 A I'm sorry. Can you -- I'm not sure I understand 13 the question.</p> <p>14 Q Well, let me take you over to document number 15 DOE 70.</p> <p>16 MR. BISSONNETTE: Fenton Exhibit 19 that 17 was previously marked. Nate will hold the 18 exhibits.</p> <p>19 Q Who is David Ryan, sir?</p> <p>20 A Can I just read the email first?</p> <p>21 Q Oh, please do.</p> <p>22 A Okay. I've read the email.</p> <p>23 Q If you will go back and look at the document</p>	<p style="text-align: right;">31</p> <p>1 Q And what if you can recall was the general gist 2 because you said you could not remember 3 specifics, and I understand that. What was the 4 general gist of your communication with the 5 superintendent?</p> <p>6 A That he had a parent who was concerned about the 7 content of a reading book in the classroom.</p> <p>8 Q And you have read the book, I take it, at this 9 point?</p> <p>10 A I did.</p> <p>11 Q Did you form an impression concerning the book?</p> <p>12 A I don't know what that means.</p> <p>13 Q Well, normally when you read a book, you either 14 like it, you dislike it, it's a tough book, it's 15 a not tough book. Did you form any impression 16 concerning the book?</p> <p>17 A The recollection that I have from reading the 18 book in particular was that it was very poorly 19 written.</p> <p>20 Q And did you do anything beyond communicating the 21 concern of the parent to the superintendent?</p> <p>22 A At that time, that was the extent of it.</p> <p>23 Q Did you thereafter do anything concerning that</p>
<p style="text-align: right;">30</p> <p>1 that was 711 which is in front of you, you will 2 see that the date of your first email in there 3 is in the month of October, but that there are 4 emails going back for a little while before 5 that. So, for example, if we look at the 6 document that is Exhibit 19 you will see it goes 7 back to August. So would it be fair to say that 8 this query spanned a period of several months?</p> <p>9 A So I just want to correct. You mentioned that 10 my first email was in October, but it's actually 11 September 30th.</p> <p>12 Q That's all right. That's all right.</p> <p>13 A Okay. So it does seem that there have been, 14 there's issues related to the Exhibit 38 which 15 are specifically enumerated in that email. In 16 the Exhibit 19 which you provided to me, it 17 seems that there are a number of concerns that 18 this parent is raising.</p> <p>19 Q And you tried to get hold of the superintendent 20 there?</p> <p>21 A That's correct.</p> <p>22 Q And to discuss it with the superintendent?</p> <p>23 A That's correct.</p>	<p style="text-align: right;">32</p> <p>1 book?</p> <p>2 A So with respect to this book, subsequent, I 3 don't recall the date, the school invited me to 4 an event, and when I was at that event, then 5 they asked me to meet with the superintendent, 6 the two assistant superintendents, and the 7 principal to talk about that book.</p> <p>8 Q Do you have a recollection of what was said by 9 whom including yourself at that meeting?</p> <p>10 A I think it was the same conversation that I had 11 expressed to the superintendent, assuming that I 12 had connected to him. I don't recall 13 specifically. But that there was a parent who 14 was concerned about the content of this book. I 15 believe that the school also shared information 16 about this parent.</p> <p>17 Q Was the book a book that was read in class; is 18 that what you said?</p> <p>19 A So my understanding from the email from █ is 20 that this is a book that, it says in her email 21 this book was read aloud to my daughter's entire 22 class. And so Read-Aloud is a pedagogical 23 technique where a teacher will actually read a</p>

<p>33</p> <p>1 book to a group of students.</p> <p>2 Q And do teachers also assign books to read at 3 home as homework or otherwise?</p> <p>4 A Some teachers may.</p> <p>5 Q And do teachers say to students in these reading 6 type of courses go select a book and tell us 7 what you think of it?</p> <p>8 A Some teachers may.</p> <p>9 Q And do they give them areas in respect of which 10 those books to be read should fall?</p> <p>11 A They may do that or not. That would not be part 12 of a Read-Aloud though.</p> <p>13 Q What would be?</p> <p>14 A So a Read-Aloud is where --</p> <p>15 Q No, no. What would that be?</p> <p>16 A What would what be?</p> <p>17 Q When you assign a subject matter to a student to 18 find a book, read it and report on it?</p> <p>19 A That would be a pedagogical exercise that the 20 teacher assigns to the student.</p> <p>21 Q All right. Now, do you have any recollection 22 you were asked to look at a book that had been 23 selected by a student in that regard?</p>	<p>1 (Discussion off the record)</p> <p>2 Q Let me see if we can move to another area and 3 come back to this.</p> <p>4 (Exhibit 39 marked for identification)</p> <p>5 A Okay. So your question. I've read the email.</p> <p>6 Q Now, you have before you a document that bears 7 Bates numbers 09896 and running through 09898, 8 Bates marked numbers having been affixed by your 9 counsel.</p> <p>10 Have you had a chance to read this?</p> <p>11 A I have.</p> <p>12 Q Now, do you know Betsi Harrington?</p> <p>13 A I do.</p> <p>14 Q How long have you known Ms. Harrington?</p> <p>15 A Since she contacted the agency.</p> <p>16 Q Not before that?</p> <p>17 A No.</p> <p>18 Q And when you received the email from Ms. 19 Harrington dated September 20, 2022, did you 20 read the book?</p> <p>21 A I did not. Actually which book was this? Let 22 me just see what book is that? Yeah, so I was 23 not able to because it was on the Sora app, and</p>
<p>34</p> <p>1 A You mean any time or in this context?</p> <p>2 Q Any time.</p> <p>3 A Any time. So I have been on school visits where 4 students are participating in the pedagogy that 5 you've described, and the students may be in an 6 independent reading time, and so the educators 7 have encouraged me, and I've encouraged myself 8 as well to sit down with students and ask them 9 what are you reading about. So that probably 10 has happened many times at that point in time.</p> <p>11 Q Do they to the best of your knowledge, 12 information, belief have in the New Hampshire 13 school system a reading club in various of the 14 schools?</p> <p>15 MR. KENISON-MARVIN: Objection. Vague.</p> <p>16 A Yeah. I'm not sure what you mean by "reading 17 club."</p> <p>18 Q Do they have clubs where students are encouraged 19 to read books of one kind or another?</p> <p>20 MR. KENISON-MARVIN: Same objection.</p> <p>21 A I have no knowledge of a specific club, but I 22 would assume that there probably are clubs, but 23 I have no knowledge of them.</p>	<p>36</p> <p>1 I didn't have access to that.</p> <p>2 Q So you've not seen or consulted the Sora app?</p> <p>3 A So can you correct that? Rephrase that 4 question?</p> <p>5 Q Have you ever consulted or looked at the Sora 6 app?</p> <p>7 A So I've only seen screen shots of it because I 8 didn't have access to it --</p> <p>9 Q All right.</p> <p>10 A -- at this time.</p> <p>11 Q It's an app according to Ms. Harrington that's 12 used in many of the schools in the state.</p> <p>13 A That's correct.</p> <p>14 Q Do you have occasion to check the various apps 15 that are used by the schools in the state?</p> <p>16 MR. KENISON-MARVIN: Objection. Vague.</p> <p>17 A I do not.</p> <p>18 Q Does your Department?</p> <p>19 A It would depend upon the nature of the checking 20 what an agency might have access to. Sora would 21 not be one of those applications that we would 22 have access to.</p> <p>23 Q Is it not a commonly used application?</p>

	37		39
1 A	It's in many of our schools.	1	clumsy in it, I apologize. If you send an email
2 Q	Why wouldn't you have access to it?	2	to Mr. Farrell, does it presuppose that he will
3 A	Because that would constitute in most cases	3	look at it?
4	curricular material, and the curricular material	4 A	It would depend upon the nature of the email
5	is the domain of the school, and it is not	5	that was sent to Rich, but when I send an email
6	inside the jurisdiction of the agency.	6	to someone I do understand that they will look
7 Q	Let me see if I understand what you just said to	7	at it, but I don't have, I guess it depends on
8	me.	8	what the email is and their reaction to that,
9 A	Okay.	9	but that was the assumption.
10 Q	Your agency does not have oversight jurisdiction	10 Q	You don't intend it to be a deadend street, you
11	of matters relating to curricular; is that what	11	just sent it to him?
12	you're saying?	12 A	No. I assume that he will take the appropriate
13 A	That's correct.	13	action.
14 Q	And you do not look into that or inquire into	14 Q	All right. Now, what kind of action would you
15	that?	15	expect him to take?
16 A	Well, so I mean, again, the inquiries would	16 A	That would depend upon the nature of the email
17	happen, we saw in an example here where someone	17	that I send to him.
18	brought curricula material to our attention. We	18 Q	All right. Let's take this one as an example.
19	are seeing here where a parent is bringing	19 A	Okay.
20	curricula material to our attention. So that is	20 Q	What would you expect him to do?
21	how the curricula material comes to our	21 A	Well, so this particular email has a number of
22	attention.	22	different pieces of content so there may be a
23 Q	And does that happen frequently, infrequently,	23	number of different aspects of this that Rich
	38		40
1	just periodically? What is your best	1	may or may not take a look at.
2	recollection?	2 Q	And do you have any expectation when you send
3 A	I would describe it as periodically.	3	this one, for example, to Mr. Farrell that he
4 Q	All right. And when you received this email	4	would inquire into what was involved here,
5	from Ms. Harrington --	5	whether the claim was correct or not correct?
6 A	Yes.	6 A	Again, I assume he would take whatever the
7 Q	-- and she had some concerns about the app and	7	appropriate action is with respect to this
8	what it showed and what it led to, you asked	8	information.
9	that she give you a call to discuss it?	9 Q	Would you expect a report back from him on it?
10 A	Yes.	10 A	So he would probably report back not specific to
11 Q	Why?	11	this but in a more general context of reporting
12 A	So that I could understand the details of the	12	on activities that his particular bureau is
13	problem that she understood there to be.	13	working on.
14 Q	And what did you do by way of followup, if	14 Q	You have a periodic meeting of a misconduct
15	anything?	15	committee?
16 A	Well, when I'm looking at this particular email	16 A	We do. That would be incorrect. It's not a
17	I sent that to Rich Farrell.	17	committee.
18 Q	And what did you ask him to do?	18 Q	It's a grouping of three people, correct?
19 A	I didn't ask him to do anything.	19 A	There are personnel. Okay.
20 Q	Why did you send it to him?	20 Q	I apologize. Is that where you would expect
21 A	Because this would fall within his domain at the	21	this to be reported on?
22	agency as something that needed to be looked at	22 A	If there was something that needed to be brought
23 Q	So let me get this straight, and if I'm being	23	to my attention, that would be the format and

	41		43
1	the forum whereby it would be brought to my	1	with it, and I have no further inquiry.
2	attention, correct.	2	And the other thing that sometimes happens
3	Q All right. If you haven't heard back from Mr.	3	is maybe you have this inquiry followed by other
4	Farrell on, hypothetically, this issue, do you	4	inquiry by the same family. You know.
5	follow up? Is that your practice?	5	Q Does there come a point in time or has there
6	A It would depend upon the nature of the issue.	6	ever come a point in time when there is a
7	Q On issues such as is here tendered.	7	question in your mind that this ought to be
8	A So in this particular case, you know, I would	8	examined further, investigated formally or
9	assume that he would explain that to me in one	9	reported to the Human Resources or Rights
10	of my educator misconduct meetings and bring	10	Commission? Has that ever happened?
11	that to my attention. If not, I may have	11	MR. KENISON-MARVIN: Objection. Vague and
12	brought it up or I may not have. I don't know	12	compound.
13	the answer to that.	13	A That's a little bit compound. If you would
14	Q Fair enough. And would you expect to see some	14	break that down.
15	sort of a written report from him on the	15	Q Sure.
16	subject?	16	A Because you escalated considerably in that
17	A Generally, I don't review written reports.	17	conversation.
18	Q So you deal primarily with him in terms of oral	18	Q Please understand, I have nothing about the
19	communications?	19	utmost respect for you as an activist,
20	A Well, we have the meeting where he's describing	20	purposeful, and proper Commissioner in any way,
21	and explaining things, correct.	21	shape or form. And so what I'm trying to do is
22	Q Now, am I correct that there are three people	22	to phrase my questions so I can get through this
23	who attend these meetings; they are Ms. Fenton,	23	as fast as I can.
	42		44
1	Mr. Farrell, and you usually; is that correct?	1	A Very well.
2	A Generally, and sometimes occasionally the Deputy	2	Q To your benefit and mine. Does there ever come
3	Commissioner might sit in as well.	3	a time that any of these misconduct committee
4	Q Does Mr. Berwick sit in?	4	meetings, I'm calling it a committee but it is
5	A Generally, he does not participate.	5	not a formal committee, I understand that.
6	Q And are there any notes, memoranda or the like	6	A Just a meeting in the Department.
7	maintained at those meetings?	7	Q Well, I should tell you your colleagues have
8	A So I don't maintain any notes or memoranda.	8	referred to it as the misconduct committee.
9	Q Do you know if anyone does?	9	When there is an issue raised that is
10	A I don't know the answer to that.	10	elevated in your mind to being a matter of
11	Q Are they recorded?	11	further concern --
12	A They're not to my knowledge.	12	A So I just want to go on the record. You
13	Q Let's assume hypothetically that he reported on	13	referred to me as an activist, and I think
14	something concerning this, and he said that's	14	that's an incorrect characterization of the role
15	nothing, don't worry about it. Is that the end	15	that I play.
16	of it?	16	Q It was intended as a compliment, sir.
17	MR. KENISON-MARVIN: Objection. Vague.	17	A But as a role that I play as the Commissioner.
18	Q I'm trying to just understand the process.	18	So then can you please repeat the questions?
19	A So it may be that he comments, and that's the	19	Q Please understand I have served as a
20	end of it or it may be that I say had you	20	Commissioner of the State of New York and of the
21	considered this or, you know, just in my typical	21	City of New York, and I think of nothing higher
22	supervisory role I may inquire about it or I may	22	in deserving of respect and I still serve as one
23	assume that he's done whatever he needs to do	23	than an activist Commissioner who does his job.

	45		47
1	So I meant that has a compliment, sir.	1	145. It has redacted content. I don't know
2	A If you may repeat the question for me?	2	what that is. And then it has what is
3	Q Madame reporter?	3	referenced as 91:297 and other sections of law,
4	(Requested portion read back by court reporter)	4	and then it's further redacted. So you're
5	A Certainly.	5	saying that this is?
6	Q And what do you do then, if I may? If there is	6	Q We have been using in the depositions thus far
7	a practice or general procedure.	7	the phrase HB 2.
8	MR. KENISON-MARVIN: Objection. Compound.	8	A To refer to this document.
9	A There is conversation in the meeting until we	9	Q For discussion purposes, for simplicity, I can
10	determine what the next steps should be, if any.	10	refer to as the material in Exhibit 1 if you
11	Q And at the end of the day, who makes the	11	prefer. I can do it in any way that is most
12	decision, you?	12	convenient for you.
13	A Well, I mean we all are collaborating around	13	A Okay. I'm comfortable, have the document, and I
14	what would happen next. So it would depend on	14	have, without going to the state statutory rule
15	the individual case.	15	I wouldn't know if this is the exact language or
16	Q And to coin a phrase, does the buck stop with	16	not, but I have the document presented to me.
17	you, sir?	17	Q Did you form an opinion to the best of your
18	MR. KENISON-MARVIN: Objection. Vague.	18	recollection that the claims that here were
19	A The buck does stop at Commissioner.	19	made, referring to Exhibit 39, rose to the level
20	Q I'm quoting Mr. Farrell, sir.	20	of a potential questionable violation of HB 2?
21	All right. Now, what I'd like to	21	MR. KENISON-MARVIN: Objection. Vague.
22	ascertain, this email that is Exhibit 39 raises	22	A Yes. So with respect to this particular
23	a number of questions about the propriety of the	23	complaint, my recollection is that the direction
	46		48
1	materials that one can get through the Sora app.	1	we took was not concern over a specific piece of
2	A That's correct.	2	content so much as it was the Sora app and what
3	Q Did you at this point in time, September of	3	students may or may not be able to access using
4	2022, have a view as to whether or not this was	4	that particular application and whether schools
5	something that would constitute a potential	5	had configured correct security parameters in
6	violation of or concern with respect to what is	6	that application to prevent students from
7	known as HB 2 and what's been referred to in	7	accessing content that may not be
8	these depositions as HB 2?	8	developmentally appropriate for them.
9	MR. KENISON-MARVIN: Objection, vague,	9	Q Is this app available to students outside of the
10	foundation, compound.	10	classroom context?
11	Q Let's see if we can agree. Exhibit 1 is the	11	A These are part of the inquiries that we were
12	full text of the so-called Banned Concepts Act.	12	trying to make and to understand how does a
13	I show it to you, sir.	13	student access it, what are the protections that
14	MR. KENISON-MARVIN: Exhibit 1. I'll	14	are afforded relative to this application.
15	provide it to the witness.	15	You know, my recollection from the various
16	MR. BISSONNETTE: I would note for the	16	conversations I had both with Ms. Harrington as
17	record that the cover page of this document that	17	well as other school personnel relative to this
18	I created as this was affixed as Exhibit 1	18	is that generally if the application is
19	attached to the Philibotte and Mejia Complaint	19	configured correctly, in the school setting,
20	filed in this case.	20	that we are able to limit students to
21	A So I have a document in front of me, you know,	21	appropriate levels of content or the application
22	referencing Chapter 91, HB 2. It has several,	22	itself possesses the ability to limit students
23	an Amended Analysis, and then it goes to page	23	to developmentally appropriate content.

1        But there was concern that when a student 2        is outside of the school environment and outside 3        of the school's either devices or firewall that 4        there may be an opportunity for that student to 5        use a third party device to use their log-in to 6        access the app and access material that may be 7        developmentally inappropriate for those 8        students. 9        Q        And what, if anything, did you do about that? 10      A        So we had a number of conversations. We spoke 11      with the individuals at this particular school. 12      I believe it was the superintendent, it may have 13      been the librarian, to explain, and we had 14      conversations with Sora to understand what the 15      controls are in place. There's the ability to 16      in Sora to allow certain materials to be 17      accessible to different age levels based on 18      developmentally appropriate content and make 19      sure that this particular School District was 20      able to configure those controls and implement 21      those. I believe in this case that those times 22      of controls had not been configured.	1        available, the application, to students outside 2        of the school setting? In other words, 3        extracurricular like? 4        A        I'm not sure I understand the question. 5        Q        You indicated that the application is available 6        to students outside of the school setting, 7        correct? 8        A        Well, so again, depending upon how it was 9        configured. 10      Q        So it's the configuration rather than the 11      application, right? 12      A        Those are the same things. You have an 13      application that is configured. So how you 14      configure the application is what determines 15      your ability to access it in various modalities. 16      Q        And if it had been inappropriately or not 17      configured at all, would this type of conduct 18      have risen to the level where you would have had 19      some concerns respecting HB 2? 20      MR. KENISON-MARVIN: Objection. Vague. 21      A        I'm not sure I understand the -- 22      Q        Well, let me be specific. You have before you 23      Exhibit 39, and you have specific claims there
23      Q        And was the application available to or used by, 24 25      and I know that's compound but I can break it 26      down if you wish, any other school to the best 27      of your knowledge? 28      A        I believe it's in a number of schools. 29      Q        A number of them. 30      A        That's correct. 31      Q        And did you have that communication with the 32      other schools also? 33      A        So we had that communication with a number of 34      the schools where that issue took place just 35      informally. It may have been the content of a 36      broader communication. We do calls with our 37      school leaders, and we may have notified them in 38      that call that if you're using Sora, there are 39      certain configuration aspects that need to be 40      done. 41      We did speak with Sora to make sure that 42      they as the vendor were able to work with their 43      customers who are the school districts to make 44      sure that Sora communicated to the districts 45      that these access controls are available to 46      them. 47      Q        To what extent did you find that they were	50      52 1        1        of it being inappropriately configured from the 2        2        standpoint of Ms. Harrington, and you indicated 3        3        that on the basis of what you had been given by 4        4        way of information that the application as used 5        5        in one or more of the schools had not been 6        6        properly configured when made available to 7        7        students. And my question is -- did you view 8        8        the application, by the way, at any point? 9        9        A        So ultimately, I had Sora provide me with access 10      10      to the application, but this was much later down 11      11      the process. 12      12      Q        Okay. Did you at any point form an opinion, 13      13      howsoever limited, as to whether when not 14      14      properly configured or not configured at all 15      15      information such as that as appears in Exhibit 16      16      39 would rise to the level of a potential 17      17      violation of HB 2 or the document before you? 18      18      MR. KENISON-MARVIN: Objection. Vague and 19      19      to the extent this question is based on premises 20      20      leading up to this question that misstates prior 21      21      testimony. You can answer. 22      22      A        So my recollection of this particular incident 23      23      is that it was focused on the issue of access to

	53		55
1	the Sora content. I don't recall that there was	1	Have you ever had occasion to look at whether
2	an educator misconduct aspect discussed relative	2	something like this would be elevated to raising
3	to this. I don't have that recollection.	3	a concern under all of those as you defined it?
4	What I do recall relative to this is	4	MR. KENISON-MARVIN: Same objection.
5	principally the issue of the Sora application	5	A So I would say no. This particular email is
6	and access to developmentally inappropriate	6	dealing with content, and it's not dealing with
7	materials.	7	educator actions per se where, you know, so I'm
8	Q Did you think the information it gleaned as	8	having difficulty creating the nexus to the
9	determined on page 09898 by Ms. Harrington would	9	statute so I would say I'm not sure I understand
10	be information that would be violative of HB 2	10	that.
11	or would warrant checking whether it was?	11	Q Let's see if we can take you there.
12	MR. KENISON-MARVIN: Objection, vague,	12	A Okay.
13	compound, legal contention.	13	MR. KENISON-MARVIN: Whenever there's a
14	A I have not actually gone through that exercise	14	good point for a break I have to use the
15	at this point in time.	15	restroom.
16	Q Have you ever looked at a complaint through the	16	(Discussion off the record)
17	lens of --	17	(Recess taken 11:26 - 11:34 a.m.)
18	A Can I just correct something? I just want to be	18	Q Commissioner, let me ask you again to put before
19	clear about that. So I'm not sure that I'm	19	you Exhibit 19. You indicated earlier that when
20	understanding your question. Can you just	20	you talked to the superintendent you conveyed
21	repeat that last question? I want to make sure	21	various complaints; is that correct?
22	I answer it precisely.	22	A So you're referring to Exhibit 19?
23	Q Sure. Looking at what Ms. Harrington believed	23	Q Let's take that one as an example.
	54		56
1	the Sora application permitted someone to see,	1	A So with respect to Exhibit 19, I would have
2	if she was correct in her analysis, would you	2	expressed the concern about that the parent had
3	say that is elevated to the level of raising	3	expressed to me that they were concerned about
4	concerns under HB 2?	4	the content of the particular Read-Aloud.
5	MR. KENISON-MARVIN: I'm going to object to	5	Q And what would you expect that the
6	the extent that that question is different than	6	superintendent would do about that?
7	the prior one so it's unclear the prior	7	A So I would assume as the superintendent they
8	question.	8	would want to know if they have a parent who is
9	Q Have you ever looked at a complaint such as is	9	upset about something happening in their
10	in Exhibit 39 through the lens of whether or not	10	instructional environment so I'm trying to bring
11	cause for concern under HB 2 is present?	11	that to their attention.
12	MR. KENISON-MARVIN: Objection. Vague.	12	Q And would you expect that the superintendent
13	A So the responsibility of the agency is to	13	would have a conversation with the teacher?
14	incorporate all laws in all of the actions that	14	A I would expect that the superintendent would do
15	it follows, whether it is, you know, the 193:40	15	whatever is appropriate given the nature of the
16	or whether it is some other law, you know,	16	specific complaint.
17	whether it's dealing with student privacy or	17	MR. BISSONNETTE: I'm accepting Esther
18	some other matter. So we bring all of those to	18	Dickerson from NEA into the Zoom. She's counsel
19	the table. The thing that I was trying to	19	of record as well.
20	clarify --	20	COMMISSIONER EDELBLUT: Do we need to
21	Q Before you go further if I may. Bringing all of	21	notice her about the recording aspect of this?
22	those to the table as you put it.	22	MR. BISSONNETTE: She's aware of it, but I
23	A Yes.	23	can convey to all lawyers that are present,

	57		59
1	including Attorney Dickinson, just want to make	1	MR. KENISON-MARVIN: Objection. Vague,
2	sure that everyone is aware that there will be	2	compound, legal contention, assumes facts not in
3	no record of the deposition per the agreement of	3	evidence. You can answer.
4	counsel.	4	Q Do you know what the remedies are, putting
5	COMMISSIONER EDELBLUT: Thank you.	5	complete aside the Code of conduct, what other
6	Q If you will look at the first page of Exhibit 19	6	remedies that are capable of being assessed
7	which is also marked as DOE 70 Bates stamped,	7	under HB 2 for a violation and proceeding
8	you'll see at the bottom [REDACTED]	8	brought either by an aggrieved party or by the
9	copies not only you but the superintendent; do	9	Attorney General or anybody else?
10	you see that?	10	MR. KENISON-MARVIN: Same objections.
11	A I see that [REDACTED] has copied a number of people.	11	Q I just want to know his knowledge.
12	Q Correct. Copies the teacher, correct?	12	A So I believe you're making reference to PL
13	A I don't know who the teacher is.	13	00007, paragraph III. "Any person claiming to
14	Q Teacher is mentioned in the second line in the	14	be aggrieved by a violation of the section
15	bottom paragraph. [REDACTED]	15	including the Attorney General may initiate a
16	A Okay. So we can stipulate that, that's fine. I	16	civil action against a school or school district
17	notice that the Governor as well is copied.	17	in superior court for legal or equitable relief,
18	Q Understood. And do you have any view as to what	18	or with the New Hampshire commission for human
19	impact that has on the teacher?	19	rights as provided under RSA 354-A-34.
20	MR. KENISON-MARVIN: Objection. Vague.	20	Q Doesn't that relief run against the school?
21	A I don't know the answer to that, but I would	21	Look at Section III. Against a school or a
22	assume that bringing this to the attention of	22	School District, correct?
23	the superintendent would help them to manage	23	A Those are the words of that statute. I've not
	58		60
1	that well.	1	had to legally interpret this so --
2	Q And what impact would it have on the teacher?	2	Q I have no problem with that. It doesn't provide
3	MR. KENISON-MARVIN: Same objection.	3	any remedy as against the teacher, does it?
4	A So again I would hope that, I have no idea what	4	Does it mention the teacher?
5	the impact would be on the teacher. My hope	5	MR. KENISON-MARVIN: Objection. Compound,
6	would be that the teacher would recognize that	6	legal contention.
7	they, too, have a parent who is uncomfortable	7	A It does not mention the teacher.
8	with some of the matters that are taking place	8	Q What impact do you think it has upon the School
9	in the school, and they would work with that	9	District, the superintendent or the School
10	parent to try to resolve those.	10	District or the principal of the school when
11	Q So they would be guided accordingly.	11	there's a complaint that a teacher has done
12	A Well, now there's a number of different	12	something wrong?
13	guidance, right? So the teacher is aware of it,	13	MR. KENISON-MARVIN: Objection. Vague,
14	the superintendent is aware of it.	14	compound.
15	Q All right. Now, other than the code of conduct	15	A I think it would depend on the nature of the
16	under what we've termed or I've termed as HB 2,	16	complaint.
17	if a complaint is filed or a proceeding is	17	Q Have you at any time formed an opinion as to
18	brought by either the Attorney General or the	18	whether or not a book, let's take A Good Kind of
19	Human Rights Commission, does the remedy include	19	Trouble as an example.
20	any punishment for the teacher or is it only the	20	A So are we on a certain exhibit?
21	school?	21	Q No. I'm not on an exhibit.
22	MR. KENISON-MARVIN: Objection.	22	A Okay.
23	A I'm not sure I understand the question.	23	Q Whether a book raises concerns within the

	61		63
1	parameters of HB 2?	1	I'm trying to understand what you're -- you've
2	MR. KENISON-MARVIN: Objection.	2	created this nexus, and I'm not sure where
3	Q I'll repeat that. Would you repeat it, please,	3	you're going.
4	Madame Reporter?	4	Q I have no problem with that.
5	(Requested portion read back by court reporter)	5	A Okay.
6	MR. KENISON-MARVIN: Objection. Vague and	6	Q I'll just ask you this question.
7	compound.	7	Is it your understanding just reading the
8	A So again, like the previous example, I'm not	8	content, any content you'd like, stuff that Ms.
9	sure I understand the nexus between specific	9	Harrington called to your attention, reading it
10	content and as I understand RSA 193:40 which	10	out loud is not teaching; is that what your
11	talks about, you know, teaching and instruction	11	position is?
12	and so on.	12	A So it's not that it's not teaching. You have to
13	Q See if I understand what you've just said. If a	13	go to A, B, C and D so you would say not
14	teacher reads out loud a paragraph or more of a	14	teaching A, if that teaching includes that one's
15	book, do you now understand the context?	15	age, sex, gender identity, sexual orientation,
16	A I know what reading out loud means so I'm not	16	race, creed, color, marital status, familial
17	sure I understand the question.	17	status, mental or physical disability, religion
18	Q Have you ever formed an opinion as to whether	18	or national origin is inherently superior to
19	any material that, in my first example, a	19	people of another age, sex, gender identity,
20	teacher reads automatic out loud or is asserted	20	sexual orientation, race, creed, color, marital
21	to have read out loud from a book rises to a	21	status, familial status, mental or physical
22	level of concern under HB 2?	22	disability, religion or national origin as an
23	MR. KENISON-MARVIN: Objection. Compound,	23	example, so if that is what is being taught, but
	62		64
1	vague.	1	content itself doesn't do that. Content is
2	A So it would be incomplete information to make	2	neutral relative to the actions.
3	that determination because a teacher could read	3	Q So you bifurcate the term "teaching" from the
4	many different parts of content that are not	4	subject matter of the teaching. Is that what
5	connected to as I understand 193 about the	5	you're saying?
6	activities of the educator.	6	A It is possible that someone could use content,
7	Q What if the book is in the curriculum?	7	that the content itself is potentially
8	A So I'm not sure I understand. What is the	8	problematic relative to this statute, and the
9	question?	9	teacher may use that content to demonstrate how
10	Q The question is simply this. Have you ever	10	it's inappropriate to, you know, to assert that
11	formed an opinion as to whether any content read	11	one's, you know, age, sex is inherently superior
12	aloud from a book by a teacher in a classroom	12	to another.
13	rises to the level of concern with respect to HB	13	So in other words, the content is not, I'm
14	2?	14	having trouble creating nexus to the content.
15	A So with all due respect, content is not the	15	Q Would teaching the subject of affirmative action
16	subject of the purported HB 2 or 193:40. The	16	violate HB 2 under that hypothesis?
17	activities, as I understand the law, you know,	17	MR. KENISON-MARVIN: Objection.
18	no pupil in any public school in this state	18	A You'd have to give me more context around the
19	shall be taught, instructed, inculcated, or	19	teaching of affirmative action.
20	compelled to express belief in or support for	20	Q Affirmative Action is a wonderful thing now. Is
21	one or more of the following.	21	that good?
22	So an educator could use a wide variety of	22	A So what I would --
23	content that doesn't then violate A, B, C or D.	23	MR. KENISON-MARVIN: Same objection. And

	65		67
1	vague. You can answer.	1	rioting, looting, burning down buildings. It
2 A	No pupil in any public school of this state	2	also made our daughter very uncomfortable and
3	shall be taught, instructed, inculcated or	3	scared," unquote.
4	compelled to express a belief in or support for	4	Would you think that, did you form any
5	any one or more of the following. That one's,	5	opinion as to whether or not that would raise a
6	you know, affirmative action, so that one's	6	level of concern under HB 2?
7	race, you know, is inherently superior to the	7 A	So again --
8	people of another race, and so the adjudication	8	MR. KENISON-MARVIN: Objection. Vague.
9	of that is something that would be made by the	9	Compound. You can answer.
10	Human Rights Commission.	10 A	My response is not to adjudicate whether or not
11 Q	Putting aside the adjudication, I'm seeking your	11	they are violations of the particular law. When
12	opinion. Would a teacher saying we need to have	12	I read that paragraph, and even just reading it
13	more affirmative action because it is a good	13	now, I saw a number of concerns that the parent
14	thing be raised to the level of concern under HB	14	had with respect to their child, and so that is
15	2?	15	really what I focused in on in terms of I have a
16 A	I would need to have more context than the	16	child who's in school who is scared relative to
17	simple statement that you provided to me. Is	17	some of that content and wanted to make sure
18	the context of the totality of the pedagogical	18	that we try to support that child.
19	instruction one that teaches, instructs,	19 Q	Is it your testimony that when you read
20	inculcates, compels, express belief in or	20	something like this you exclude from your
21	support for that one's race is inherently	21	consideration the provisions of HB 2?
22	superior.	22	MR. KENISON-MARVIN: Objection. Vague.
23	So simply Title IX itself, at least my	23 A	So my responsibility is not to adjudicate.
	66		68
1	limited understanding of it, does not state that	1 Q	I didn't ask you about adjudicating. Put aside
2	one race is inherently superior to another race	2	adjudicating. Is it your position that when you
3	is my understanding of that. So I would need to	3	read something like this, material I just
4	have more context to understand the actions of	4	quoted, you exclude from your consideration any
5	the educator.	5	concern with respect to HB 2?
6 Q	I'd like to take you for a moment to just jump	6	MR. KENISON-MARVIN: Same objection.
7	ahead. Let me take you back to Exhibit 19 and	7 A	So again, when I read a paragraph like this, my
8	to what I believe is the third page of that	8	concern is all of the statutes which we are
9	document. First word on that page being trust.	9	responsible for administering.
10 A	Okay.	10 Q	Okay. That's fine. I'd like to take you now to
11 Q	And take you down to the third paragraph?	11	a copy of your OpEd piece captioned, "Teach
12 A	Which begins with regarding?	12	children about racism, not to be racists." All
13 Q	Regarding.	13	right? Exhibit 4. This is a copy of an OpEd
14 A	Okay.	14	piece in the Union Leader. Correct? And you
15 Q	I'd ask you to read that, please.	15	wrote that; is that correct? That's the
16 A	Okay. So your question?	16	question. Please read it.
17 Q	Question, turning to that paragraph starting	17 A	So my question --
18	with the word "regarding," let me just read two	18 Q	I have a clearer copy of the text if that's what
19	sentences I'm interested in. Regarding the	19	you want.
20	book, quote, "A Good Kind of Trouble," it is a	20 A	I have to put my glasses on for this one because
21	terrible book that shames, quote, "white"	21	it's so tiny.
22	children into thinking they are the oppressors	22 Q	I have one that was taken from the online --
23	in society. This book talks about gunshots,	23 A	That's okay. I can read it here. I've got my

<p>69</p> <p>1       glasses on.</p> <p>2   Q    Sir, this is a copy of it, if this helps you.</p> <p>3   A    No. This is fine. I can read it right here.</p> <p>4       Okay.</p> <p>5   Q    I will take you to the paragraph that is Exhibit</p> <p>6       4, paragraph 10.</p> <p>7   A    Okay.</p> <p>8   Q    Starts with the words, In Ibram Kendi's "How to</p> <p>9       be an Antiracist."</p> <p>10   A    That's correct.</p> <p>11   Q    Do you see that paragraph, sir?</p> <p>12   A    I do.</p> <p>13   Q    Would you say reading just the following would</p> <p>14       raise concerns for you under HB 2. Quote, "In</p> <p>15       Ibram Kendi's "How to Be an Antiracist," a</p> <p>16       prominent text in support of Critical Race</p> <p>17       Theory, he states, quote, "the only remedy to</p> <p>18       racist discrimination is antiracist</p> <p>19       discrimination. The only remedy to past</p> <p>20       discrimination is present discrimination...The</p> <p>21       only remedy to present discrimination is future</p> <p>22       discrimination," close the quote within the</p> <p>23       quote and close the main quote.</p>	<p>71</p> <p>1   A    This is a book that is used in schools in New</p> <p>2       Hampshire, and even if a teacher were to focus</p> <p>3       on the book, the question would be you need the</p> <p>4       broader context. How is it that the teacher is</p> <p>5       focusing on that particular passage. If the</p> <p>6       teacher were to focus on that passage with the</p> <p>7       idea that we do not want to discriminate against</p> <p>8       individuals based upon their age, sex, gender</p> <p>9       identity, sexual orientation, race, creed,</p> <p>10      color, marital status, familial status, mental</p> <p>11      and physical disability, religion or natural</p> <p>12      origin, it might be a very compelling lesson.</p> <p>13   Q    And would that disclaimer that you have just</p> <p>14       quoted from be sufficient to take it out of your</p> <p>15       areas of concern under HB 2?</p> <p>16            MR. KENISON-MARVIN: Same objections.</p> <p>17   A    I'm not sure I understand the question.</p> <p>18   Q    Very simple. If the teacher were to recite just</p> <p>19       the first material I quoted without in any way</p> <p>20       adding the material you just quoted, would that</p> <p>21       raise a matter of concern?</p> <p>22   A    So --</p> <p>23            MR. KENISON-MARVIN: Same objection.</p>
<p>70</p> <p>1       If a teacher were to teach that, would that</p> <p>2       raise concerns under HB 2?</p> <p>3            MR. KENISON-MARVIN: Objection. Vague.</p> <p>4       Legal contention.</p> <p>5   A    Again, depending on how the teacher was teaching</p> <p>6       content. Content itself. Ibram Kendi's</p> <p>7       material itself is not the subject as I</p> <p>8       understand it to 193:40. If the teacher, you</p> <p>9       know, believes that we should teach students to</p> <p>10       discriminate against others based on, from</p> <p>11       193:40-I, you know, age, sex, gender identity,</p> <p>12       sexual orientation, race, creed, color, then I</p> <p>13       think that that would be a problem.</p> <p>14       Again, I don't have adjudicatory</p> <p>15       responsibility for that so these are my</p> <p>16       opinions, but the intent of the OpEd is to say</p> <p>17       we do not want discrimination in our New</p> <p>18       Hampshire schools.</p> <p>19   Q    And if a teacher were to say I want you to read</p> <p>20       that book and focus on that paragraph, would</p> <p>21       that raise concerns?</p> <p>22   A    So again --</p> <p>23            MR. KENISON-MARVIN: Objection.</p>	<p>72</p> <p>1   A    I would need to see it in its complete context.</p> <p>2   Q    That's the complete context.</p> <p>3   A    There is no circumstance where that's the</p> <p>4       context.</p> <p>5   Q    That's it.</p> <p>6   A    So the purpose of the OpEd is that we want to</p> <p>7       teach students about racism but not to be</p> <p>8       racists. So the determination of whether or not</p> <p>9       a teacher is discriminating against someone or</p> <p>10       teaching students that one group is inherently</p> <p>11       superior to another would be a determination by</p> <p>12       the Human Rights Commission.</p> <p>13   Q    Now my question. Please read it back.</p> <p>14            (Requested portion read back by court reporter)</p> <p>15   Q    I repeat my question.</p> <p>16            MR. KENISON-MARVIN: Same objection.</p> <p>17   A    I just think it's a fallacious hypothetical.</p> <p>18   Q    Forget whether it's fallacious, wrong, anything</p> <p>19       you like. I'm asking you would it raise concern</p> <p>20       in your mind.</p> <p>21   A    I can't adjudicate it because I don't have</p> <p>22       enough information.</p> <p>23   Q    That's all the information there is.</p>

<p style="text-align: right;">73</p> <p>1 A I can't adjudicate it then. I don't have enough 2 information.</p> <p>3 Q So you would not form an opinion based on that?</p> <p>4 A I don't believe that I would ever be faced with 5 a set of circumstances that are limited to one 6 sentence out of context.</p> <p>7 Q Are you incapable of forming an opinion based on 8 that?</p> <p>9 A No. I think it's very easy to form opinions 10 about things, and my opinion is that you have 11 provided insufficient context in your 12 hypothetical to be able to form an accurate 13 opinion.</p> <p>14 Q I didn't ask you whether it was accurate or 15 inaccurate. I asked you if you could form an 16 opinion.</p> <p>17 A I'm not able to form an opinion based on that 18 limited --</p> <p>19 Q Fair enough. Can a teacher say they agree with 20 Kendi?</p> <p>21 A I don't understand why they would not be able to 22 agree with Kendi. The question that would come 23 back is are they teaching, instructing,</p>	<p>1 asking --</p> <p>2 A So I don't have the context. So a teacher may 3 say I agree with Kendi as a rhetorical device to 4 stimulate conversation among students.</p> <p>5 Q So you would have no problem then, for example, 6 in allowing a teacher to put forward -- hear my 7 question, please. You would have no problem 8 with a teacher putting forward Mr. Kendi's book 9 and focusing on that paragraph.</p> <p>10 MR. KENISON-MARVIN: Objection. Vague.</p> <p>11 A So the teacher themselves would be in the best 12 position to know if they are teaching, 13 instructing, inculcating or compelling to 14 express a belief in or support for any one or 15 more of the following, as I've repeated, that 16 one's age, you know or this immutable 17 characteristic is inherently superior to another 18 one. The teacher themselves have clarity of the 19 action that they are doing at that time. I have 20 a hypothetical construct that is really limited.</p> <p>21 Q Let me ask you this question. Do you have any 22 concern that Kendi's book with all of the 23 content in it is shown to students in class?</p>
<p style="text-align: right;">74</p> <p>1 inculcating or compelling to express belief in 2 or support for any one or more of the following. 3 That one's age, sex, gender identity, sexual 4 orientation, race, creed, color, marital status, 5 any of these immutable characteristics is 6 inherently superior to those of another. That 7 is the salient question.</p> <p>8 Q No, it isn't, sir. My question is very simply 9 this.</p> <p>10 Can a teacher say I agree with the 11 quotation by Kendi that is as follows and no 12 more. "How to Be an Antiracist, a prominent 13 text in support of Critical Race Theory states 14 the only remedy to racist discrimination is 15 antiracist discrimination. The only remedy to 16 past discrimination is present discrimination. 17 The only remedy to present discrimination is 18 future discrimination," unquote. Can a teacher 19 say I agree with that premise?</p> <p>20 MR. KENISON-MARVIN: Same objection.</p> <p>21 A So there's insufficient information to 22 adjudicate that.</p> <p>23 Q I'm not asking you to adjudicate, sir. I'm just</p>	<p>1 So it would depend on the context of how that 2 material was used in the class.</p> <p>3 Q Read the book. That's the context. The sole 4 context. I'd like to you read the book, and we 5 will discuss it.</p> <p>6 A So now there's more context. It would depend on 7 what that discussion is, and I would go back to 8 the statute, and I would say that the educator 9 themselves would have clarity if they are 10 teaching, instructing, inculcating or compelling 11 to express a belief in or support for one or 12 more of these following things.</p> <p>13 Q Have you ever read the book <i>Stabbed</i>?</p> <p>14 A I have not.</p> <p>15 Q Would you have any concern if a teacher said I'd 16 like you as an extracurricular activity to read 17 anyone of the following books: <i>Stamped</i>, Kendi's 18 <i>How to Be an Antiracist</i>, or the book that I 19 mentioned earlier, <i>A Good Kind of Trouble</i>.</p> <p>20 Would you have any problem with that? Read any 21 one of those books in your free time.</p> <p>22 A So again --</p> <p>23 MR. KENISON-MARVIN: Objection. Compound.</p>

	77		79
1 A	The jurisdiction of the Department is not on the	1	that's a very good book. In fact, I think I
2 curricular materials in the school. Right? So	2	shared with you earlier the conversation that I	
3 that's not in the scope of my responsibility to	3	had with the superintendent, two assistant	
4 administer the various materials that are used	4	superintendents and their principal, and I	
5 in curriculum.	5	expressed my perspective to them about the	
6 Q	If a complaint came in saying that the Kendi	6	literary quality of the particular book, but it
7 book, the Stamped book, or the A Good Kind of	7	remains their determination whether or not	
8 Trouble have been listed by a teacher as books	8	they're going to use that book. So that is	
9 that kids should read in their free time, would	9	purely an opinion that I have shared with them.	
10 you have any problem in terms of how to handle	10 Q	That's exactly what I want. And now tell me, if	
11 that complaint?	11	you will, do you think that would have any	
12 A	Again, the curricular materials that a school is	12	persuasive impact upon them?
13 choosing are not within the domain of the	13 A	I don't know the answer to that.	
14 Department of Education.	14 Q	Do you think it would have any persuasive impact	
15 Q	Then why is it that you went to the	15	upon the teacher if that were communicated by
16 superintendent and talked to them about A Good	16	the superintendent to the teacher the	
17 Kind of Trouble?	17	Commissioner of Education has said he doesn't	
18 A	Because they had a parent who was upset, and I	18	think that's a very good book.
19 would assume if I were a superintendent and I	19	MR. KENISON-MARVIN: Objection. Vague.	
20 had an upset parent that I would want to know	20	Calls for speculation.	
21 about that trying to help them support their	21 A	I think it would depend on how the	
22 families.	22	superintendent communicated that to the teacher.	
23 Q	But you just said that's not within your domain.	23 Q	You just said the Commissioner of Education has
	78		80
1	MR. KENISON-MARVIN: Objection.	1	told us that's not a very good book. Do you
2 A	What is within the domain of the Department is	2	think that would have a persuasive impact on the
3 to make sure that the system is able to function	3	teacher?	
4 well, and part of functioning well is to make	4	MR. KENISON-MARVIN: Same objection.	
5 sure that the constituencies are being served.	5	Vagueness, speculation. You can answer.	
6	So as I support my superintendents, if I	6 A	So I will speculate we have very capable
7 have a complaint from a parent, I bring that to	7	superintendents in the State of New Hampshire	
8 the attention of the superintendent so they can	8	who would take a piece of information like that	
9 manage it appropriately.	9	and they would manage it well to provide	
10 Q	And that's because you believe it's within your	10	constructive feedback to any of their educators.
11 responsible area as the Commissioner of	11 Q	Thank you. Give me just two minutes if I may.	
12 Education, correct?	12	One more question about this OpEd. Did	
13 A	To support them, correct.	13	anybody assist you or work with you in the
14 Q	And so in doing that, do you in any manner, way,	14	drafting of Exhibit 4?
15 shape or form tell them that there are issues	15 A	I don't have any specific recollection, but	
16 concerning the prescription of any of the three	16	normally when I'm writing an OpEd it could be	
17 books I've just mentioned?	17	that my Public Information Officer would be	
18 A	So --	18	assisting me and proofreading it.
19	MR. KENISON-MARVIN: Objection. Vague.	19 Q	Anyone else?
20	Legal contention. You can answer.	20 A	I don't recall.
21 A	I mean, if I have a conversation with the	21 Q	Now, sir, I would like to show you a document I
22 superintendent, in a particular conversation	22	don't think has yet been marked.	
23 hypothetically I may express like I don't think	23	I ask you to take a look at Exhibit 14,	

	81		83
1	please.	1	Q You saw, of course, that there are photographs
2	Now, the second page of Exhibit 14 is an	2	in there, correct?
3	OpEd that you wrote captioned Education's Sacred	3	A Correct. In the exhibit.
4	Trust.	4	Q And did you ask whether consents had been
5	A That's correct.	5	obtained from the people who were photographed?
6	Q If you prefer I can give you a blowup version	6	A I did not.
7	unless you can read that with ease.	7	Q I'm going to show you a document that's been
8	A I'll put my glasses on. Okay. I've read the	8	Bates marked DOE 07053, and ask if you have seen
9	OpEd. Not the attachments.	9	it before, and then I'm going to ask that it be
10	Q Did anyone assist you in writing that OpEd?	10	marked as an exhibit.
11	A Again, it may be that my Public Information	11	MR. BISSONNETTE: For simplicity, this has
12	Officer reviewed a draft of it, but otherwise I	12	been previously marked as Exhibit 31.
13	don't know.	13	Q Have you seen that document before?
14	Q Anyone else? You don't remember.	14	A Let me just read it real quickly.
15	A Not that I recall.	15	Q For the record, I said 053 so it's 054.
16	Q Now, you'll see that in that document there is a	16	Look at Exhibit 32, Nate. I'm going to
17	link to some external materials. Correct?	17	give you 32 as well.
18	A Correct.	18	MR. KENISON-MARVIN: Would you like me to
19	Q Who compiled those materials?	19	hand him 32?
20	A I did.	20	MR. MOERDLER: Yes.
21	Q Pardon me?	21	MR. KENISON-MARVIN: This one is marked
22	A I did.	22	yellow, but all the others are gray. It's not
23	Q Okay. And did you read them before you referred	23	the --
	82		84
1	to them?	1	MR. BISSONNETTE: Yes. The reason is I
2	A I did.	2	copied that internally, not externally, because
3	Q And you referred to those as, quote,	3	it is marked Confidential under Protective
4	"exemplifying," quote, "actual instructional	4	Order.
5	material from New Hampshire schools that parents	5	(Discussion off the record)
6	have identified as conflicting with their	6	MR. BISSONNETTE: 32 is marked
7	values."	7	confidential. Not 31. I comply with protective
8	A That's correct.	8	orders.
9	Q Now, what I would ask you is a couple of very	9	A So your question.
10	quick preliminary questions. Where were the	10	Q All right. Now, my first question is did you
11	materials obtained by you?	11	see this document before?
12	A So generally they would have come into me via an	12	A 32?
13	email or perhaps they came in directly to Rich	13	Q 31.
14	or Diana, and they were brought to my attention	14	A I have seen 31.
15	or they may have come in to Stephen Berwick or	15	Q And 32 is the attachments to 31.
16	someone else in the organization. So some place	16	A Sorry. 32 is?
17	here they came to my attention.	17	Q Yes.
18	Q And did you ask whether consents had been	18	A So not all of 32.
19	obtained from either the person who photographed	19	Q I believe --
20	the photographs that are part of it or any of	20	A 32 has an email that's not associated with it so
21	the materials that are in there to	21	what you're asserting is the attachments to 31
22	republication?	22	are pages 2 through the end but not the first
23	A I don't believe so.	23	page of 32 because that's something different.

85  
 1 Q Not the first page. That's absolutely correct.  
 2 A Okay. So I'll stipulate that if you think these  
 3 are the attachments I don't know because I don't  
 4 have these.  
 5 [REDACTED]

[REDACTED]  
 13 Q Let me go off the record for a moment.  
 14 (Discussion off the record)  
 15 Q If you will take a look at Exhibit 14, the  
 16 document --  
 17 MR. KENISON-MARVIN: Is this for me or the  
 18 witness?  
 19 Q Both of you. It's on the record.  
 20 Look at the document that's marked, it's  
 21 already part of the court record, I might add.  
 22 The document that's marked at the bottom PL  
 23 00696.

86  
 1 A Just that page, 696? Then your question?  
 2 Q [REDACTED]

87  
 1 [REDACTED]  
 2 A There's topic dividers in there, and the topic  
 3 that you initially referred to was Topic One and  
 4 now we're on Topic Five which begins on page PL  
 5 00714.  
 6 Q So let me take this piece by piece if I may.  
 7 A Okay.  
 8 Q That's the only way I can do it rationally. You  
 9 have seen Exhibit 31 before, correct?  
 10 A 31, I've now read that and I believe I've seen  
 11 31 before, yes.  
 12 Q And you have seen Exhibit 32 before.  
 13 A I have not seen Exhibit 32. I've seen the  
 14 attachments to Exhibit 32.  
 15 Q And you had not previously seen 32.  
 16 A No.  
 17 Q If you will look at Exhibit 32 so we complete  
 18 it, other than the -- may I see 32 for a moment,  
 19 please? Other than the top 2, 4, 6, 8 lines, it  
 20 is Exhibit 31. Is it not?  
 21 A It's not because Exhibit 31 includes content at  
 22 the top as well that's not part --  
 23 Q That's what I said. That's what I said.

86  
 1 A Just that page, 696? Then your question?  
 2 Q [REDACTED]

88  
 1 A Actually you referenced the header at the top of  
 2 32 but Exhibit 31 similarly has information.  
 3 [REDACTED]  
 7 Q Right.  
 8 A The content of that email appears to be --  
 9 Q Included in.  
 10 A -- consistent between Exhibits 31 and 32.  
 11 Q And so are the attachments, are they not?  
 12 A So there are no attachments on 31. There are  
 13 just references to attachments.  
 14 Q Right. Okay.  
 15 MR. MOERDLER: Nate, I'm going to ask that  
 16 you produce for us a copy of the full text of  
 17 [REDACTED]  
 18 [REDACTED]. That means including the exhibits,  
 19 not just the references.  
 20 MR. KENISON-MARVIN: 31 exhibits?  
 21 MR. MOERDLER: Yes.  
 22 MR. KENISON-MARVIN: I'll look at and see  
 23 if that's been done or not. I'll take your

	89		91
1	request. I will represent to you that I will	1	going to ask that you mark as a separate number
2	look. I can do it during a break as well.	2	a copy of a communication from DOE
3	MR. MOERDLER: Okay.	3	Communications Office to Commissioner Edelblut
4	MR. BISSONNETTE: I didn't mean to	4	with a series of 11 attachments as a separate
5	interrupt. I can just say that I'm on	5	exhibit; is that correct? Is that stipulated?
6	Relativity right now and have looked at the	6	Those are the attachments.
7	documents after Bates stamped DOE 7054 in	7	MR. KENISON-MARVIN: That the document that
8	Exhibit 31 and just haven't seen the exhibits.	8	you're holding, it has, the email on top is the
9	MR. KENISON-MARVIN: I'll take a look. I	9	email that is document --
10	can do it now. I can do it during a break later	10	Q This document is complete; is that correct?
11	and see.	11	Both as to the document itself and the
12	MR. MOERDLER: Let's do it so we know we're	12	attachments?
13	talking about the same things as apples and	13	MR. KENISON-MARVIN: It has all of these
14	apples.	14	attachments.
15	A The other thing that I will stipulate is that	15	MR. MOERDLER: Correct.
16	you put on the record there was an email from	16	MR. BISSONNETTE: Is that, this document,
17	████████ to Commission Edelblut, and that's not	17	Exhibit 40?
18	the case.	18	(Exhibit 40 marked as an exhibit)
19	Q Say that again?	19	MR. MOERDLER: Mr. Attorney General,
20	████████	20	Mr. Bissonnette, we are agreed, are we not, that
	████████	21	Exhibit 40 is subject to the same protective
	████████	22	order that has previously been entered into
	████████	23	respecting confidentiality of documents.
	90		92
1	████████	1	MR. KENISON-MARVIN: Yes, I'll agree with
2	A Thank you. Just trying to be precise.	2	that. Thank you for bringing it up.
3	Q I stand corrected.	3	MR. BISSONNETTE: Yes. Plaintiffs
4	A If you wanted to stipulate that these may be the	4	Philibotte and Mejia are on board.
5	attachments --	5	Q Commissioner, I ask you to place before you
6	MR. KENISON-MARVIN: I want to take an	6	Exhibit 40, and I ask you to note a couple of
7	opportunity to look and see what's going on.	7	things. ██████████
8	MR. MOERDLER: I'm going to make the		████████
9	assumption that they are, although they haven't		████████
10	been produced, just for simplicity's sake, all		████████
11	right, without prejudice to you're saying they		████████
12	weren't attached, all right?		████████
13	MR. KENISON-MARVIN: If you're comfortable		████████
14	going forward on that basis. I'm also happy to		████████
15	take a look now and get you an answer.		████████
16	MR. MOERDLER: Go ahead.		████████
17	MR. KENISON-MARVIN: If we want to go off	17	Q Okay. Now, did you at some point become aware
18	the record.	18	of Exhibit 32?
19	Q Sure.	19	A So the first time I've seen this is today.
20	(Lunch recess taken 12:31 - 1:15 p.m.)	20	Q Were you aware there was such a document without
21	Q Madam reporter, I'm going to mark a document,	21	seeing the document itself?
22	portions of which have previously been referred	22	A I was not aware of it.
23	to albeit they were not complete. So I'm now	23	████████

	93		95		
1		1	MR. MOERDLER: Nate, for the record, would		
		2	you please check the files to see if there's any		
		3	responsive material at all to Exhibit 40? In		
		4	other words, when the Commissioner received it,		
		5	what did he do with it, are there any documents,		
		6	I'm looking for documents.		
		7	MR. KENISON-MARVIN: I understand. I'll		
		8	look.		
		9	MR. MOERDLER: Is it logged, was it sent to		
		10	Farrell, if it was sent to somebody, did that		
		11	person report? On his end it ends with the		
		12	receipt here.		
		13	MR. KENISON-MARVIN: Understood. I'll		
		14	look, and there are privilege logs forthcoming.		
		15	That's been something as we try to work through		
		16	discovery that we are getting to them as we've		
		17	indicated as quickly as we can.		
		18	MR. MOERDLER: Do you have a sense it was		
		19	privileged? Farrell's?		
		20	MR. KENISON-MARVIN: There have been, there		
		21	are documents that are being withheld from being		
		22	delivered on process privileged grounds with		
		23	respect to communications amongst Department		
	94		96		
1	A	Correct.	members about deliberating with respect to		
			issues that the Department is deciding. So that		
			will all be logged. I can't tell you right now		
			if there's one that relate to this series of		
			emails, but I can look specifically.		
16	Q	Fine. Now, would you tell us what you did with	6	Q	Let me ask a question. If you object, you'll
17		Exhibit Number 40 upon receipt?	7		object.
18	A	I don't recall exactly. I imagine that I	8		MR. KENISON-MARVIN: Sure.
19		somehow got the content of that information to	9	Q	Do you recall either your communicating or your
20		Rich Farrell.	10		asking someone else to communicate with
21	Q	Did you get any report from Rich Farrell with	11		Mr. [REDACTED] that he should communicate with
22		respect to that document?	12		HRC?
23	A	If I did, I don't recall what that was.	13	A	So I don't, I don't have any recollection of
			14		communicating directly with Mr. [REDACTED] on this
			15		matter.
			16	Q	Do you have any recollection of having asked
			17		somebody else to do so?
			18	A	And I don't have any recollection of asking
			19		somebody else to do so.
			20	Q	Do you have any recollection somebody else did
			21		so even without asking you?
			22	A	I don't know if they have or have not.
			23	Q	Just completing the circle.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q Exhibit 14 was published on the 15th of April of

6 the year 2022.

7 A Yes.

8 Q [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]

41 [REDACTED]

42 [REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

46 [REDACTED]

47 [REDACTED]

48 [REDACTED]

49 [REDACTED]

50 [REDACTED]

51 [REDACTED]

52 [REDACTED]

53 [REDACTED]

54 [REDACTED]

55 [REDACTED]

56 [REDACTED]

57 [REDACTED]

58 [REDACTED]

59 [REDACTED]

60 [REDACTED]

61 [REDACTED]

62 [REDACTED]

63 [REDACTED]

64 [REDACTED]

65 [REDACTED]

66 [REDACTED]

67 [REDACTED]

68 [REDACTED]

69 [REDACTED]

70 [REDACTED]

71 [REDACTED]

72 [REDACTED]

73 [REDACTED]

74 [REDACTED]

75 [REDACTED]

76 [REDACTED]

77 [REDACTED]

78 [REDACTED]

79 [REDACTED]

80 [REDACTED]

81 [REDACTED]

82 [REDACTED]

83 [REDACTED]

84 [REDACTED]

85 [REDACTED]

86 [REDACTED]

87 [REDACTED]

88 [REDACTED]

89 [REDACTED]

90 [REDACTED]

91 [REDACTED]

92 [REDACTED]

93 [REDACTED]

94 [REDACTED]

95 [REDACTED]

96 [REDACTED]

97 [REDACTED]

99

1 You have acknowledged that you did the  
2 compilation of the materials that are in Exhibit  
3 14.

4 A Okay.

5 [REDACTED]

[REDACTED]

8 [REDACTED]

[REDACTED]

[REDACTED]

11 [REDACTED]

98

1 A [REDACTED]

3 Q All right. And if you did, do you have any  
4 recollection as to why you picked these items  
5 bearing in mind this is some six months after  
6 publication some six months after receipt? Do  
7 you have any recollection as to had you marked  
8 it as something to follow up on or what?

9 MR. KENISON-MARVIN: Objection.

10 MR. MOERDLER: I know it's multiple,  
11 compounded, and I acknowledge that. I can do it  
12 piece by piece. Correct?

13 MR. KENISON-MARVIN: Objection. Vague.  
14 Compound and calls for speculation.

15 MR. MOERDLER: I know it's compound. We'll  
16 do it slowly.

17 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 MR. KENISON-MARVIN: Objection. Assumes

10 facts not testified to. Misstates prior

11 testimony.

12 MR. MOERDLER: I'm sorry?

13 MR. KENISON-MARVIN: Assumes facts not

14 testified to and misstates prior testimony.

15 MR. MOERDLER: All right. We'll go through

16 it.

17 MR. KENISON-MARVIN: I can explain my basis

18 if you want me to.

19 MR. MOERDLER: No, it's going to take too

20 long. Let's do it again.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

	101		103
1	[REDACTED]	1	[REDACTED]
	[REDACTED]		[REDACTED]
16	Q And you did not have a separate memorandum or		[REDACTED]
17	notation, this is important, we'll take a look		[REDACTED]
18	at it down the road?		[REDACTED]
19	A No. I have nothing like that.		[REDACTED]
20	Q Do you know whether Exhibit 40 was the subject		[REDACTED]
21	of discussion at the misconduct, I call it		[REDACTED]
22	committee or group?		[REDACTED]
23	A I don't have any recollection of this being part		[REDACTED]
	102		104
1	of that conversation.		[REDACTED]
2	Q Do you have any recollection that Exhibit 40 was		[REDACTED]
3	the subject of any conversation in or about		[REDACTED]
4	October of 2021 between you and either		[REDACTED]
5	Mr. Farrell or Ms. Fenton?		[REDACTED]
6	A Yes. So I have to assume it was part of some		[REDACTED]
7	kind of a conversation that took place.		[REDACTED]
8	Q All right. You testified, I believe, that you		[REDACTED]
9	did not communicate at any point with		[REDACTED]
10	Mr. [REDACTED].		[REDACTED]
11	A I don't believe I have, no.		[REDACTED]
12	[REDACTED]		12 MR. BISSONNETTE: That's Bates stamped
	[REDACTED]		13 00321.
	[REDACTED]		14 MR. MOERDLER: Not on my copy.
	[REDACTED]		15 MR. BISSONNETTE: Oh, I'm sorry. Carry on.
16	Q Do you have any reason to believe that anyone		[REDACTED]
17	associated with DOE communicated with		[REDACTED]
18	Mr. [REDACTED] prior to the publication in Exhibit		[REDACTED]
19	14?		[REDACTED]
20	A I don't know the answer to that.		[REDACTED]
21	Q Do you have any knowledge, information or		[REDACTED]
22	belief, and I'd like you to take a look at		[REDACTED]
23	Exhibit 40 as I ask that.		[REDACTED]



	109		111
1	time.	1	responsibility to install a value system they
2	MR. KENISON-MARVIN: I mean, I'm happy to	2	believe is right for the child. Whether it is a
3	look to, and you will, that would be logged,	3	rogue educator or a corporation trying to impose
4	too, you would see that in a privileged log. So	4	a value system on impressionable youngsters,
5	I'm happy to, I think that that's fair question	5	that is not their job. That is the job of
6	for you to ask.	6	parents and caregivers.
7	MR. MOERDLER: And the last question is	7	"Fortunately, parents can choose to turn
8	since Mr. Berwick has said in writing he logs	8	off Disney. They can't, however, easily escape
9	everything that passes his desk, that's an	9	the efforts of activist educators who might be
10	exaggeration, but would you check with him as	10	knowingly dismantling the foundations of the
11	well?	11	value system they're attempting to build. That
12	MR. KENISON-MARVIN: Who did you ask about?	12	means that families, when they send their
13	MR. MOERDLER: Berwick.	13	children to school, entrust educators to respect
14	MR. KENISON-MARVIN: Berwick.	14	the value systems that the family is building,
15	MR. MOERDLER: All right?	15	that this is the sacred trust that educators
16	MR. KENISON-MARVIN: So that we can keep	16	have."
17	things moving here, I'll make sure that we're on	17	So the point of these examples is really to
18	the same page. Let's talk about this when we're	18	flag or highlight content that individuals among
19	all wrapped up just to make sure we're on the	19	my constituencies have brought to our attention
20	same page.	20	that they believe may conflict with value
21	MR. MOERDLER: Okay. Good.	21	systems of the families of the children that are
22	Q Now, would you tell me, please, referring to	22	in the schools.
23	Exhibit 14, why these materials were included in	23	Q Do you within that framework believe it is not
	110		112
1	the article? I know you said that you wanted to	1	the responsibility of teachers to influence the
2	use them as illustrative of something, and I'm	2	value systems of the children toward a
3	trying to understand what it is that you're	3	particular goal such as "thou shalt not steal"?
4	trying to communicate as the bottom line	4	A So I believe that it is the responsibility of
5	message --	5	the educators to support parents and support the
6	A So I think that the OpEd is fairly	6	value systems of parents in the education of
7	self-explanatory. "When children come to school	7	children.
8	they arrive reflecting the value systems of the	8	Q And those values being whatever the parent deems
9	families responsible for raising them. Those	9	appropriate?
10	value systems are as different as the children	10	A Well, so we have content standards that they
11	themselves." I'm going to -- if I continue on.	11	teach to students, and those content standards
12	"Recent revelations from educators around	12	are broad in terms of the content that they
13	the country, mostly on social media platforms	13	have. So for example, in our social studies
14	like TikTok, reveal a number of educators who	14	content standards, we talk about the importance
15	believe that it is their responsibility to weigh	15	of law abiding, and stealing would not be law
16	in on and influence the value systems of	16	abiding. So the parents would know in advance
17	children towards a particular goal. This	17	that this is the content that their children
18	impulse to influence a child's value system is	18	might learn which is thou shalt not steal. So
19	not limited to educators."	19	that would be a value system that the parent
20	And -- then we talk about, I'll just keep	20	understands entering into the system, that that
21	reading. "As was recently revealed, Disney also	21	is a value system of our historical context that
22	wants to weigh in. It is not good enough simply	22	will be presented to their children.
23	to allow parents and caregivers the	23	Q I'm going to ask you, if I may, simply to

	113		115
1	identify a couple of documents. I'm going to	1	Q I have one last question.
2	show you a document which has the Bates stamp	2	A I believe as well I called the superintendent
3	871, and we'll mark that as an exhibit. It's a	3	and indicated to him that Representative Andrus
4	document from you to "m41 hillsboroughnh."	4	was inquiring about this matter also.
5	(Exhibit 41 marked for identification)	5	Q One last question. Do you have any recollection
6	Q You've seen that before?	6	of having suggested to Ms. Fenton and/or
7	A Hang on. I'm just finishing reading it, if I	7	Mr. Farrell at any point in time that they
8	may. Okay. So I'm familiar with this email.	8	should steer questions relating to possible
9	Q This is an authentic copy of it?	9	misconduct areas away from you or handle it
10	A I believe so.	10	themselves?
11	Q I'm going to show you a document that's been	11	A I don't recall such a conversation.
12	Bates stamped DOE 00866 and ask you if you are	12	Q Would you have had such a conversation? Would
13	familiar with this document.	13	you have suggested they take them away from you,
14	(Exhibit 42 marked for identification)	14	they should handle them without you?
15	A Let me just read this. Okay. I'm familiar with	15	A So I don't believe so, and that would be
16	Exhibit 42 now.	16	contradictory to our operation and function as
17	Q That is a document that you --	17	an agency.
18	A I believe I'm familiar with it, yes.	18	Q Thank you. I thank you for your cooperation.
19	Q One more and we'll ask the question. Same	19	EXAMINATION
20	question will apply on this document, your	20	BY MR. BISSONNETTE:
21	familiarity with it.	21	Q Thank you, Commissioner. I know we have an hour
22	(Exhibit 43 marked for identification)	22	left, and I'm going to be as brief as I can.
23	A So I'm familiar with all three of these.	23	Again, to introduce myself, I'm Gilles
	114		116
1	Q One more document.	1	Bissonnette with the ACLU. I'm here on behalf
2	I'll show you one more document and ask you	2	of the Plaintiffs Mejia and Philibotte.
3	if you recall receiving this document from	3	Cindy, would you mind just reading back
4	Representative Louise Andrus on or about May 15,	4	that last response? I just wanted to ask a
5	2022.	5	followup question.
6	(Exhibit 44 marked for identification)	6	(Requested portion read back by court reporter)
7	A I've reviewed all four documents.	7	Q Why would it be contradictory to how your agency
8	Q And do you recall receiving the document that	8	functions?
9	would be Exhibit 44?	9	A Because when the "committee" to use the
10	A I believe I did.	10	attorney's comment but basically when the Bureau
11	Q Do you have any recollection of having responded	11	of governance meets to review various matters
12	to it?	12	associated with their work they're going to
13	A I do believe I had a conversation with	13	bring to me anything that they think is
14	Representative Andrus.	14	important for me to look at.
15	Q What did you say to her and what did she say to	15	Q And you are involved in the decision-making
16	you if you remember?	16	process concerning whether something may
17	A If I recall correctly, I encouraged her to talk	17	constitute a violation of the Code of conduct?
18	to the superintendent and indicate that the	18	A So I think I've described before how in that
19	titles of the books would be subject probably to	19	meeting there's a presentation of various
20	a Right-to-Know request and that collaboration	20	matters in various stages of development, and
21	and cooperation might make it easier for both	21	there is generally a recommendation from the
22	parties to be able to satisfy the needs that Ms.	22	team in terms of if there was some type of an
23	Andrus was seeking.	23	action that we would take including gathering

<p style="text-align: right;">117</p> <p>1 additional information or something else, then I 2 would weigh in in that conversation on that. 3 Q Do you view your role in those meetings as 4 accepting or rejecting the recommendations that 5 are presented to you? 6 A No. I review it as supervisory of a function in 7 the agency. 8 Q But you're involved in the final approval 9 process then it sounds like; is that fair to 10 say? 11 A Yes. Can I just clarify that? 12 Q Of course. 13 A I'm involved in the final approval process when 14 it reaches a point of a final action that may be 15 taken. It is possible that there are matters 16 that are resolved that either I have forwarded 17 over or have come in in other places that they 18 may take, act on, and it never rises to the 19 level of attention that they believe I need to 20 be part of that conversation. 21 Q Is something that would reach your level of 22 attention included in the Department's 23 determination as to whether or not there's been</p>	<p style="text-align: right;">119</p> <p>1 So it's really my involvement is in that 2 process where there's some type of an agreement 3 reached with an educator and then I would sign 4 that settlement agreement. 5 Q What if there's not an agreement reached and the 6 Department thinks there's a violation, how are 7 you involved in that process? 8 A So generally not, I mean, I may have been 9 involved leading up to the point where there's 10 no agreement that's reached. It's only ever 11 happened twice I think since I've been here. 12 And those matters then fall to Diana, and they 13 arrange for a Hearing Officer to hear it, and 14 then it goes before the State Board of 15 Education. But my role, I'm no longer part of 16 that process. 17 Q I don't mean to beat a dead horse -- 18 A No, no. That's okay. 19 Q But what I'm trying to understand is are you 20 involved in essentially what I'm going to call 21 like the charging decision. That may not be the 22 right term for it, but that's what I'm really 23 trying to get at. So I don't know if you can</p>
<p style="text-align: right;">118</p> <p>1 a violation of the Code of conduct? 2 A Generally, if there's a violation of the code of 3 conduct, then I would know about it. 4 Q Would you be involved in the final approval 5 process in determining whether, in the 6 Department's determination as to whether there's 7 a violation? 8 A Yes. So the way that most -- and quite frankly, 9 I'm going to conjecture a bit, speculate a 10 little bit, outside of my realm I would need to 11 confer with others in my agency relative to 12 this, but the work I'm involved with mostly is 13 oftentimes when there is a code of conduct 14 violation that's being evaluated by the 15 governance team, they are working with the 16 educator, generally the educator's legal 17 counsel, and reaching what I inadvertently refer to 18 as kind of a plea bargain, an agreement in terms 19 of what action should be taken. If no agreement 20 can be reached, then it's really not a 21 Department's action. I believe at that point in 22 time it goes to a hearings officer and to the 23 State Board of Education.</p>	<p style="text-align: right;">120</p> <p>1 describe your involvement in that piece. 2 A So most of the time the way that it works is 3 that there's a recommendation made to me by my 4 governance team, and then we discuss how they 5 arrived there and if that seems like it's an 6 appropriate place. 7 Q That's helpful. Thank you. I don't know 8 anything about this so I appreciate it, besides 9 what I've learned in this case. 10 I want to direct your attention, 11 Commissioner, to two exhibits that are already 12 before you that have been previously marked. 13 Exhibits 18 and 14. So if you can just have 14 those in front of you. I know you may already 15 have Exhibit 14 in front of you. 16 A I don't know if I have 18. 17 Q 18 might be a new one for you. Thank you. 18 A Trying to keep track here. And 14 is the other 19 one I do have. Yes. 20 Q Commissioner, this is the exhibit we talked 21 about. So if you do need assistance, please let 22 me know in reviewing it. 23 So I'd just ask you, so my question which</p>

<p>121</p> <p>1 is not a question is I just ask you to review 2 Exhibit 18 and let me know when you're done, 3 please.</p> <p>4 A So your question?</p> <p>5 Q I'm just going to direct your attention to the 6 page 10287 on Exhibit 18 with the line, can you 7 look into this. Do you see the language?</p> <p>8 A Yes. Well, I can't see it now, but now I can.</p> <p>9 Q Fair enough. So that's the portion of the chain 10 that you are on; is that correct?</p> <p>11 A Correct. I am on that portion of the chain.</p> <p>12 Q And if I direct your attention to the bottom of 13 that page on 10287, there is an email from Ms. 14 [REDACTED] to you saying, "This was brought to my 15 attention today. A Human Relations teacher at 16 the Londonderry High School gave these 17 worksheets out to students. Is this allowed." 18 Do you see the language?</p> <p>19 A That's the very first string of the email.</p> <p>20 Q Exactly. And the last two pages are those 21 worksheets. Correct?</p> <p>22 A I can assume that they are, but I don't know. 23 I'd have to go back and look at the original</p>	<p>123</p> <p>1 important clarification. Are the pages in 2 Exhibit 14, Topic Seven, Bates stamped 736 to 3 737, the same worksheets that you received on 4 April 4th?</p> <p>5 A I believe they probably are, but without going 6 back to the original email, right? But I 7 believe they probably are.</p> <p>8 Q Gotcha. So your understanding is that these 9 worksheets in Exhibit 14 that we just 10 referenced, you received those about a little 11 over a week prior to the publication of your 12 April 15th OpEd receiving them from a Ms. 13 [REDACTED], correct?</p> <p>14 A I believe so.</p> <p>15 Q We're done with that. Thank you. I just have a 16 couple other, well, few other questions.</p> <p>17 There's a duty to report under the educator 18 Code of conduct, correct?</p> <p>19 A I believe there's a duty to report for every 20 citizen in the State of New Hampshire.</p> <p>21 Q What do you mean by that?</p> <p>22 A If someone believes that a child is being 23 abused, then they have a duty to report.</p>
<p>122</p> <p>1 email.</p> <p>2 Q Okay. I'm going to -- do you recall seeing 3 those worksheets on or around April 4th, 2022?</p> <p>4 A I mean, I may have. I'd have to go back and 5 refresh my memory because I see a lot of 6 content.</p> <p>7 (Court reporter admonition re simultaneous talking)</p> <p>8 Q I'm trying to cut to the chase. All I'm really 9 trying to get at is demonstrating that that 10 attachment was in your April 2022 OpEd.</p> <p>11 So now I'm going to direct your attention 12 to Exhibit 14 on Topic Seven, Bates stamped PL 13 735 to 737. Do you see those?</p> <p>14 A I see those.</p> <p>15 Q Are those the same worksheets that are in 16 Exhibit 18?</p> <p>17 A They appear to be, yes.</p> <p>18 Q And in fact, did you get those worksheets --</p> <p>19 A So the only thing I would correct is that the, 20 on PL 00737 there are, in Exhibit 14 there's 21 redactions of responses, and those are not 22 redacted in 10289.</p> <p>23 Q Gotcha. So thank you for that, and that's an</p>	<p>124</p> <p>1 Q Fair enough. You're referring to New Hampshire 2 abuse and neglect statute?</p> <p>3 A Correct, which is a duty to report.</p> <p>4 Q Fair enough. What I'm referring to, though, is 5 the duty to report in the Educator Code of 6 conduct. Would you agree with me that there's a 7 duty to report under the Educator Code of 8 conduct?</p> <p>9 A Yes, I believe there is.</p> <p>10 Q And there's a specific provision in the 11 Education administrative rules governing the 12 contours of that duty to report obligation, 13 correct?</p> <p>14 A I believe so. I haven't looked at that portion 15 of the rules in some time, but I believe that 16 there is a duty to report for educators relative 17 to misconduct.</p> <p>18 Q Fair enough. That would include violations of 19 HB 2, correct? Because HB 2 is part of the 20 Educator Code of conduct?</p> <p>21 MR. KENISON-MARVIN: Objection. Vague and 22 legal contention.</p> <p>23 A So can you repeat the question?</p>

<p>125</p> <p>1 Q Could you read it back?</p> <p>2 (Requested portion read back by court reporter)</p> <p>3 A So I believe, and I haven't looked at the</p> <p>4 Educator code of conduct of recent, but I</p> <p>5 believe that the code of conduct refers to RSA</p> <p>6 354-A. I don't know if it makes reference to</p> <p>7 193:40.</p> <p>8 Q I'd just refer you to Exhibit 1.</p> <p>9 A Which one?</p> <p>10 Q Exhibit 1.</p> <p>11 A Yes, I do. Okay.</p> <p>12 Q I'm just going to direct your attention to page</p> <p>13 Bates stamped 07.</p> <p>14 A Okay.</p> <p>15 Q IV.</p> <p>16 A Yes.</p> <p>17 Q That says violation of this section by an</p> <p>18 educator shall be considered a violation of the</p> <p>19 educator code of conduct that justifies</p> <p>20 disciplinary sanction by the state board of</p> <p>21 education. Do you see that?</p> <p>22 A I do.</p> <p>23 Q So is a violation of HB 2 a violation of the</p>	<p>127</p> <p>1 this looks like this is an exchange between you</p> <p>2 and an individual named Kyle Sanborn who is a</p> <p>3 member of the Gilford School Board. Is that an</p> <p>4 accurate reflection of Exhibit 45?</p> <p>5 A He asserts that he is a member of the Gilford</p> <p>6 School Board. I'm not intimately familiar with</p> <p>7 that.</p> <p>8 Q Any reason to disbelieve --</p> <p>9 A No.</p> <p>10 Q There's reference here on the bottom of page 67</p> <p>11 of Exhibit 45 that there is a section that you</p> <p>12 will be referencing. Do you see that language?</p> <p>13 A I do.</p> <p>14 Q Where would you have referenced this -- strike</p> <p>15 that.</p> <p>16 I'll go back to that question. What</p> <p>17 context would you have been referencing the</p> <p>18 language at the bottom of page 67 of Exhibit 45?</p> <p>19 A So from the email and my recollection of the</p> <p>20 conversation is he believed that there was, he</p> <p>21 states in his email to me, and I think, I don't</p> <p>22 see it in that email, but I believe it was part</p> <p>23 of the conversation about a duty to report and</p>
<p>126</p> <p>1 educator code of conduct?</p> <p>2 MR. KENISON-MARVIN: Same objection.</p> <p>3 A So your initial question was is HB 2 part of the</p> <p>4 code of conduct. I responded that RSA 354-A is</p> <p>5 part of the educator code of conduct. This</p> <p>6 states clearly that the violation of this</p> <p>7 section by an educator shall be considered a</p> <p>8 violation of the educator code of conduct that</p> <p>9 justifies disciplinary sanction by the state</p> <p>10 board of education.</p> <p>11 Q And that section is RSA 193:40, correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. Sorry. I now understand why you said</p> <p>14 what you said. Thank you for that.</p> <p>15 A Okay.</p> <p>16 Q Fair enough. No, I've got you. I'm going to</p> <p>17 mark an exhibit here, and I do not know where we</p> <p>18 are.</p> <p>19 (Exhibit 45 marked for identification)</p> <p>20 Q When you're done reviewing Exhibit 45, just let</p> <p>21 me know, please.</p> <p>22 A Okay. So I've read it.</p> <p>23 Q I'm just going to submit to you, Commissioner,</p>	<p>128</p> <p>1 so I was trying to reference back to him this</p> <p>2 duty to report.</p> <p>3 Q I guess what I'm interested in is the language</p> <p>4 "that I will be referencing."</p> <p>5 A Yes.</p> <p>6 Q Where would you be referencing this is what I'm</p> <p>7 trying to get at. Was there a presentation, a</p> <p>8 speaking engagement? Is that what you were</p> <p>9 referring to there?</p> <p>10 A I'm not certain. Because the email is a little</p> <p>11 bit kind of chopped up as well. You'll see like</p> <p>12 there's a certain font and is this correct and</p> <p>13 it pastes something in then I have a statement</p> <p>14 down below that says, and there's an aberrant</p> <p>15 parentheses floating around in there, any</p> <p>16 credential holder shall report any suspected</p> <p>17 violation of code of conduct following the</p> <p>18 school, the school district or the SAU reporting</p> <p>19 procedures.</p> <p>20 So I'm referencing this in this</p> <p>21 conversation is what I believe I'm doing.</p> <p>22 Q Do you recall anything else about your</p> <p>23 communications with Mr. Sanborn you haven't</p>

<p>129</p> <p>1 testified to?</p> <p>2 A I believe that Mr. Sanborn was concerned about</p> <p>3 the new law, and he was concerned whether or not</p> <p>4 educators were following that.</p> <p>5 Q Did you ever have a communication with Mr.</p> <p>6 Sanborn outside of what exists in Exhibit 45?</p> <p>7 A So the only the thing is I did, I met him at an</p> <p>8 event up in Gilford. Might have been the</p> <p>9 Belknap County meeting and had a conversation</p> <p>10 with him there. That was the conversation I had</p> <p>11 that I recall.</p> <p>12 Q Did you talk about the duty to report at that</p> <p>13 meeting?</p> <p>14 A I don't recall that.</p> <p>15 Q Do you recall talking about HB 2?</p> <p>16 A I don't recall if I did what I might have said.</p> <p>17 Q We can move on from that document. I promised</p> <p>18 to be efficient.</p> <p>19 The next exhibit is 46.</p> <p>20 (Exhibit 46 marked for identification)</p> <p>21 Q So Commissioner, I'm actually, before you read</p> <p>22 that, I'd also just ask you to pull Exhibit 29.</p> <p>23 These two documents go hand in hand. I don't</p>	<p>131</p> <p>1 Richard Farrell wrote. It's unclear who that</p> <p>2 was sent to although the respondent at the top</p> <p>3 is Karlyn Borysenko.</p> <p>4 Q I know you're not on this email. Have you seen</p> <p>5 Exhibit 29 before?</p> <p>6 A Let me just read it?</p> <p>7 Q Of course. Please do.</p> <p>8 A So I've read 29.</p> <p>9 Q So the bottom of page 29, Mr. Farrell tells Ms.</p> <p>10 Borysenko, Commissioner Edelblut has forwarded</p> <p>11 your inquiry directly to Ahni Malachi on 19</p> <p>12 August 2022 for her review.</p> <p>13 So my question is do you recall ever</p> <p>14 sending an inquiry from Ms. Borysenko to</p> <p>15 Director Malachi in August of 2022?</p> <p>16 A I don't have that recollection.</p> <p>17 Q Now I'm going to have to direct your attention</p> <p>18 to Exhibit 46.</p> <p>19 A Okay.</p> <p>20 Q So exhibit, I would just represent to you</p> <p>21 Exhibit 46, also a document you are not on, is</p> <p>22 an email from Ms. Borysenko to the Human Rights</p> <p>23 Commission but also copying Department of</p>
<p>130</p> <p>1 want to hide the ball here.</p> <p>2 A Do I have 29? I don't recall having 29 yet. We</p> <p>3 just need to get that.</p> <p>4 Q Just let me know when you have both exhibits in</p> <p>5 front of you.</p> <p>6 A Which one should I read first?</p> <p>7 Q I'm not going to have you read any right now,</p> <p>8 but I'm sure that I'm going to have you to refer</p> <p>9 to them. Are you aware of a woman named Karlyn</p> <p>10 Borysenko?</p> <p>11 A Maybe the name is vaguely familiar. It's an</p> <p>12 unusual name, but that's the extent that I have</p> <p>13 for that.</p> <p>14 Q Okay. So maybe I will direct your attention now</p> <p>15 to the exhibits. Your name is not on either of</p> <p>16 them so that's why I hesitated to officially</p> <p>17 direct your attention to them.</p> <p>18 So first I'm going to direct your attention</p> <p>19 to Exhibit 29 in the email from Mr. Farrell to</p> <p>20 Karlyn Borysenko. Do you see that email? I</p> <p>21 haven't asked you to read it yet, but do you see</p> <p>22 the email I'm referencing?</p> <p>23 A So I see an email that says on August 24 at 9:37</p>	<p>132</p> <p>1 Education. What I'm referring to there is the</p> <p>2 email at the bottom of page 9900 in Exhibit 46.</p> <p>3 Do you see that?</p> <p>4 A I see an email from Karlyn to the Human Rights</p> <p>5 Commission with a cc to DOE info and Rich</p> <p>6 Farrell.</p> <p>7 Q So there are to two attachments to this email.</p> <p>8 Exeter Regional School District Violation and</p> <p>9 Exeter Regional School District Violation Data.</p> <p>10 I'm going to submit to you on the version that</p> <p>11 you have in Exhibit 46 you only have one of</p> <p>12 those attachments. We're sorting that out with</p> <p>13 your counsel, but I wanted to flag this is not a</p> <p>14 full and complete document with all the</p> <p>15 attachments.</p> <p>16 But my question to you is do you recall of</p> <p>17 seeing this email on page 9901 of Exhibit 46 and</p> <p>18 the HRC form that Ms. Borysenko completed also</p> <p>19 in Exhibit 46?</p> <p>20 A Yes, I have no recollection of seeing either of</p> <p>21 these.</p> <p>22 Q So you, I presume then it's fair to say you have</p> <p>23 no recollection of ever forwarding this August</p>

133	135
<p>1 19th, 2022, complaint to Director Malachi?</p> <p>2 A Correct.</p> <p>3 Q Do you ever send complaints under HB 2 to</p> <p>4 Director Malachi directly?</p> <p>5 A I don't believe I ever have.</p> <p>6 Q Okay. Do you have any -- let me go back to</p> <p>7 Exhibit 29.</p> <p>8 Mr. Farrell represents that you forwarded</p> <p>9 Ms. Borysenko's inquiry directly</p> <p>10 Mr. Commissioner Malachi. Would you have any</p> <p>11 reason to think that Mr. Farrell is mistaken?</p> <p>12 A Or it could be that Mr. Farrell is referring to</p> <p>13 the fact that it's possible that either he or</p> <p>14 Diana forwarded something representing the</p> <p>15 agency, and so maybe that's what he's referring</p> <p>16 to when he's referring to that.</p> <p>17 Q Do you know one way or the other sitting here</p> <p>18 today though?</p> <p>19 A No.</p> <p>20 (Exhibit 47 marked for identification)</p> <p>21 Q Commissioner Edelblut, I'd just ask you to</p> <p>22 review Exhibit 47 and let me know when you've</p> <p>23 finished your review.</p>	<p>1 email?</p> <p>2 A I don't know what Attorney Fenton's actions were</p> <p>3 with respect to this. I believe she may have</p> <p>4 had conversations with the Attorney General's</p> <p>5 office.</p> <p>6 Q I guess my question is do you know whether or</p> <p>7 not the Department had any communications with</p> <p>8 Mr. Hewitt about this email after it was sent on</p> <p>9 August 25, 2022?</p> <p>10 A I don't believe I've had any email</p> <p>11 correspondence.</p> <p>12 Q Anyone from the Department have email</p> <p>13 correspondence with Mr. Huyett?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Anyone from the Department have verbal</p> <p>16 communication with Mr. Huyett concerning the</p> <p>17 contents of this August 25th email?</p> <p>18 A So I believe that Mr. Huyett followed up in a</p> <p>19 conversation with me and asked me about it and I</p> <p>20 indicated to him that I had referred it to my</p> <p>21 attorney.</p> <p>22 Q Do you recall anything else about that</p> <p>23 conversation sitting here today?</p>
134	136
<p>1 A So your question?</p> <p>2 Q My question is you're on this email chain,</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q Did your Department ever respond to this press</p> <p>6 inquiry?</p> <p>7 A I don't know the answer to that.</p> <p>8 Q Did you respond to this press inquiry?</p> <p>9 A I don't know the answer to that.</p> <p>10 Q Do you know if any of your colleagues at the</p> <p>11 Department responded to this inquiry?</p> <p>12 A I don't know the answer to that.</p> <p>13 Q You can set it aside.</p> <p>14 (Exhibit 48 marked for identification)</p> <p>15 Q After you've reviewed Exhibit 48, commissioner,</p> <p>16 just let me know that you're done.</p> <p>17 A Yes. Okay. I've read it.</p> <p>18 Q Do you recall receiving this email from Ian</p> <p>19 Huyett on Thursday, August 25th, 2022?</p> <p>20 A I do.</p> <p>21 Q Did you respond in writing to this email?</p> <p>22 A I believe I forwarded this to Diane.</p> <p>23 Q Do you recall Attorney Fenton responding to this</p>	<p>1 A No. I don't. That was the gist of</p> <p>2 conversation.</p> <p>3 Q How long did that conversation last?</p> <p>4 A I don't recall.</p> <p>5 Q So I'm going to ask you -- you can set that</p> <p>6 aside, Commissioner, and I'm moving quickly as</p> <p>7 you can see since I know we're getting close.</p> <p>8 I'm going to have you again put before you</p> <p>9 Exhibit 14 which are the topics to your April</p> <p>10 2022 OpEd. Do you have that in front of you?</p> <p>11 A I do.</p> <p>12 Q I'm going to direct your attention to Topic Ten</p> <p>13 on Exhibit 14 which is Bates stamped 748 to 758.</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q What is Topic Ten?</p> <p>17 A So I believe that this is content that we</p> <p>18 received from a parent that was about Exploring</p> <p>19 Whiteness and Becoming an Anti-Racist, and I</p> <p>20 believe that it takes place in a school district</p> <p>21 as kind of an extra class.</p> <p>22 Q Was that parent Dan Richards?</p> <p>23 A I believe it was.</p>

	137		139
1 Q	I'm just going to, just closing the loop, so I'm	1	the documents, the syllabus on Exhibit 49 that
2	going to mark another exhibit.	2	Mr. Richards submitted to the House Executive
3	(Exhibit 49 marked for identification)	3	Department's Administration Committee is the
4 Q	So do you have Exhibit 49 before you,	4	same document that you received from
5	Commissioner?	5	Mr. Richards, a portion of which you attached as
6 A	Yes.	6	Topic Ten to Exhibit 14; is that correct?
7 Q	I'm just going to represent to you what this is.	7 A	Correct.
8	So this is portions of the legislative history	8 Q	You can set that aside.
9	of HB 544 in which Mr. Richards submitted some	9	MR. KENISON-MARVIN: Can I use the
10	written testimony to the House Executive	10	restroom?
11	Departments and Administration Committee, and	11	MR. BISSONNETTE: Of course.
12	this is a reflection of what his testimony is.	12	(Recess taken 2:33 - 2:38 p.m.)
13 A	Okay.	13 Q	Commissioner, before you you should have two
14 Q	Okay? And I would just note that on Exhibit 49	14	exhibits, Exhibits 12 and 13. Are they in front
15	Mr. Richards attaches a document entitled on	15	of you?
16	page 544 241, Exploring Whiteness and Becoming	16 A	They are.
17	an Anti-Racist Activist. Do you see those	17 Q	So I'm just going to represent to you that
18	pages?	18	Exhibit 12 is an Attorney General Memorandum
19 A	I do.	19	directed to the HRC. Exhibit 13 looks to be
20 Q	241 to 244. Correct?	20	information, a reflection of a meeting that may
21 A	Yes. I'm just pointing out that they're	21	have occurred on September 8th, 2021, right
22	different than in 14.	22	after the date that Exhibit 12 was issued.
23 Q	I was just about to do that. So it looks to me	23	So my question is do you remember a meeting
	138		140
1	like --	1	that took place on September 8, 2021, between
2 A	Part of the syllabus was cut off at some point.	2	you and Director Malachi?
3 Q	Yes. Page 241 in Exhibit 49 is the same thing	3 A	I don't remember specific -- I mean, I've had
4	as page 749 in Exhibit 14. Correct?	4	various meetings with Ahni Malachi over the
5 A	That's what it looks like other than there is a	5	years. I don't remember a specific meeting on
6	notation on 00749 that's not on 0241.	6	that day. To be clear as well, I don't actually
7 Q	Those notations are, in addition to redactions	7	book my calendar. That's done by a scheduler.
8	in page 749, you also have two handwritten	8 Q	Fair enough. Fair enough. I just noticed
9	comments that say okay. Am I correct?	9	because this is the date right after the AG memo
10 A	Correct. Those are the notations.	10	was issued so do you recall any meeting with
11 Q	Those redactions on page 749 are the Department	11	Director Malachi about Exhibit 12?
12	redactions, I presume?	12 A	I don't.
13 A	Correct.	13 Q	Okay.
14 Q	Also going to turn your attention on Exhibit 14	14 A	In fact, I don't even recall a conversation with
15	to page 72 of 79 in the upper right. Do you see	15	Ahni Malachi about this AG memo.
16	that?	16 Q	Fair enough. When you typically meet with
17 A	Yes.	17	Director Malachi on issues is it usually you two
18 Q	Same page as page 243 in Exhibit 49. Correct?	18	that are present or are there other individuals
19 A	That looks correct.	19	also that participate or does it depend?
20 Q	And it's the same for the next pages of those	20 A	It depends on what the issue is. So Ahni
21	documents, correct? They're the same?	21	Malachi is also on the Board of Directors of one
22 A	They appear to be.	22	of our charter schools. So I see her in that
23 Q	So I just want to make sure I understand that	23	context, and I see her in a professional

<p style="text-align: right;">141</p> <p>1 context. Generally if I'm meeting with Ahni 2 Malachi relative to any matter like this, 3 there's probably an Attorney General individual 4 who would be present.</p> <p>5 Q Okay. You tell me if this isn't fair to say, 6 but I'm relying directly on your OpEd on Exhibit 7 4 just to not hide the ball, but is it fair to 8 say --</p> <p>9 A Exhibit 4. Which one is that. I do a lot of 10 OpEds.</p> <p>11 Q Teach children about racism.</p> <p>12 A Okay.</p> <p>13 Q So what I want to make sure is is it fair to say 14 that you supported HB 2?</p> <p>15 A So what I support is to make sure that children 16 and educators in New Hampshire are not 17 discriminated against in any way, shape or form.</p> <p>18 Q And in your view, as reflected in Exhibit 4, 19 they would be protected by HB 2 in your view, 20 right?</p> <p>21 A So can you repeat that question?</p> <p>22 Q Strike that. I'm just going to refer you to the 23 bottom of Exhibit 4, page 398, quote, "The</p>	<p>1 2, right?</p> <p>2 A I believe those are contributing to that.</p> <p>3 Clearly, I've not in this OpEd excerpted the 4 entire content of Exhibit 1.</p> <p>5 Q Um-hum.</p> <p>6 A But I think that these are components that help 7 us toward that mission.</p> <p>8 Q I'm not trying to hide the ball here. What I'm 9 just trying to get is, Commissioner, you say 10 twice in this OpEd, the last line and the first 11 line, "legislation recently passed by the New 12 Hampshire Senate." That's HB2 as reflected in 13 Exhibit 1, correct?</p> <p>14 A Say that again?</p> <p>15 Q Sure. You say in the first line and the last 16 line of your OpEd as reflected in Exhibit 4, 17 you're referring to legislation recently passed 18 by the New Hampshire Senate. You see both of 19 those references?</p> <p>20 A Yes.</p> <p>21 Q In there you're referring to HB 2, right?</p> <p>22 A I'm referring to specifically the components of 23 193:40, but I believe that the other parts of HB</p>
<p style="text-align: right;">142</p> <p>1 guardrails outlined in this legislation recently 2 passed by the New Hampshire Senate help us to do 3 just that. "Do just that" is the language that 4 precedes that sentence in the OpEd. Do you see 5 that language?</p> <p>6 A I mean, it's all of the preceding language like 7 a summarizing sentence.</p> <p>8 Q I agree with that. My question is you're 9 referring to HB 2 in that sentence, correct?</p> <p>10 A I quote aspects of that legislation in there 11 that are, I believe, excerpts from RSA 193:40, 12 and so I do believe that that law will help 13 protect our teachers and our students from being 14 discriminated against.</p> <p>15 Q And, in fact, you say on the opening sentence of 16 this OpEd it's important, correct?</p> <p>17 A I think it's important to make sure that our 18 students are not discriminated against and our 19 teachers are not discriminated against.</p> <p>20 Q So you think it's important.</p> <p>21 A I think not discriminating is important.</p> <p>22 Q When you say "not discriminating," what you're 23 referring to are the provisions that refer to HB</p>	<p style="text-align: right;">144</p> <p>1 2 potentially are contributory to that, but this 2 OpEd is focused on those elements of 193:40.</p> <p>3 Q I got you. That's fair. I see what you're 4 saying. So the language though that you're 5 referring to on both the first sentence and the 6 last sentence on Exhibit 4 is if I now turn your 7 attention to Exhibit 1 the provisions of RSA 8 193:40.</p> <p>9 A Well, so not all of 193:40, but specifically 10 193:40-(a), (b), (c), and (d) which are in my 11 mind the provisions that the legislation passed 12 in order to try and not result in 13 discrimination.</p> <p>14 Q In those provisions that you just referenced, is 15 it fair to say based on the language in your 16 OpEd that you supported that language?</p> <p>17 A So I believe as I have indicated in this OpEd 18 that that will help avoid discrimination against 19 our educators and our students in New Hampshire.</p> <p>20 Q You're saying something a little bit different 21 from what I'm asking which is did you support 22 that language?</p> <p>23 A So I don't know what you mean by "support that</p>

<p>1 language."</p> <p>2 Q Did you oppose it? Did you oppose the language?</p> <p>3 A So I don't have an opportunity to vote yes or no</p> <p>4 on any particular piece of legislation, and so</p> <p>5 in this OpEd I'm reflecting my opinion that</p> <p>6 those aspects of RSA 193:40 that are referenced</p> <p>7 and summarized in this OpEd are important</p> <p>8 towards avoiding discrimination of our students</p> <p>9 and our students in New Hampshire.</p> <p>10 Q And in your view they're also needed, correct?</p> <p>11 A Well, I believe that those provisions will help</p> <p>12 avoid discrimination of students and educators</p> <p>13 in the state of New Hampshire. Whether or not</p> <p>14 they're needed is a determination that the</p> <p>15 legislature has to make.</p> <p>16 Q I'm just using your language, Commissioner. I</p> <p>17 don't mean to fight you on this, but you say in</p> <p>18 the opening sentence of Exhibit 4 that it's</p> <p>19 needed. That was your position, correct?</p> <p>20 A Yes, it is.</p> <p>21 Q Okay. So I'm just going to ask you again. Is</p> <p>22 it fair for me to characterize Exhibit 4 as</p> <p>23 reflecting the Department of Education's support</p>	<p>145</p> <p>1 simply provide legislators with either the</p> <p>2 benefits or the negative consequences as we</p> <p>3 understand them associated with proposed</p> <p>4 legislation.</p> <p>5 Q You're familiar with the parental bill of rights</p> <p>6 legislation?</p> <p>7 A I am.</p> <p>8 Q Did the Department of Education take a position</p> <p>9 on that piece of legislation?</p> <p>10 A We did not.</p> <p>11 Q Did the Department of Education tweet about the</p> <p>12 outcome of that bill this week?</p> <p>13 A I believe it did.</p> <p>14 Q Do you recall a statement, quote, "The New</p> <p>15 Hampshire Department of Education is</p> <p>16 disappointed with the indefinite postponement of</p> <p>17 SB 272 by the House and is hopeful that this</p> <p>18 conversation will continue since it is possible</p> <p>19 to simultaneously support students, educators,</p> <p>20 and parents." Do you recall that?</p> <p>21 A So I believe that that is a partial reflection</p> <p>22 of a statement that this Department put out.</p> <p>23 Q You don't think that that tweet reflects the</p>	<p>146</p>	<p>148</p>
<p>1 for the provisions of HB 2 reflected in RSA</p> <p>2 193:40 that you mentioned just moments ago?</p> <p>3 A I think the better way to understand this OpEd</p> <p>4 is that I as the Commissioner of Education</p> <p>5 believe that we do not want to, and as the</p> <p>6 title, states, right? We want to teach our</p> <p>7 children about racism and not to be racist so</p> <p>8 that is the intent of this OpEd.</p> <p>9 Q And the portions that you referenced before in</p> <p>10 RSA 193:40 would do that in your view, correct?</p> <p>11 A I believe that they will contribute to that.</p> <p>12 Q And therefore in your view that language is</p> <p>13 important and needed, correct?</p> <p>14 A So I believe that that language is needed in the</p> <p>15 context of being helpful towards making sure</p> <p>16 that our teachers and our students are not</p> <p>17 discriminated against.</p> <p>18 Q Okay.</p> <p>19 (Exhibit 50 marked for identification)</p> <p>20 Q Before I direct your attention to Exhibit 50,</p> <p>21 does the Department of Education take positions</p> <p>22 on legislation?</p> <p>23 A We do not take positions on legislation. We</p>	<p>1 Department's support for SB 272?</p> <p>2 A So similar to the OpEd which was put out after</p> <p>3 the legislature acted on the legislation and</p> <p>4 that tweet which was put out after the</p> <p>5 legislature acted on it, we are simply</p> <p>6 reflecting what we believe are the benefits or</p> <p>7 detrimental effects of certain legislation.</p> <p>8 Q So I just want to make sure I understand your</p> <p>9 testimony. You don't believe that tweet that</p> <p>10 was published last week to reflect the</p> <p>11 Department's support for that bill? You don't</p> <p>12 interpret it that way?</p> <p>13 A So what I would understand that to be is it's</p> <p>14 not possible to support something that is no</p> <p>15 longer a bill and is indefinitely postponed.</p> <p>16 Q Okay. I may have misheard this, Commissioner.</p> <p>17 I apologize if I did, but there was some</p> <p>18 reference before to the book, How to be</p> <p>19 Antiracist, by Ibram X. Kendi. Do you remember</p> <p>20 generally talking about that book earlier today?</p> <p>21 A I believe it came up in your line of</p> <p>22 questioning.</p> <p>23 Q I believe it did. So I want to just direct your</p>		

<p style="text-align: right;">149</p> <p>1 attention to page 19 of what's been photocopied.    2 The language that is underlined. I just want to    3 make sure that's the language that you quoted in    4 your OpEd on Exhibit 4. Correct?</p> <p>5 A I can go look.</p> <p>6 Q Okay.</p> <p>7 A So I, the language looks similar. I do note    8 that there's a "dot dot dot" in my quotation in    9 my OpEd so it could be that my quotation, I    10 don't recall exactly where I got it from, but it    11 could be from a presentation that Mr. Kendi    12 provided some place as opposed to quoting    13 directly out of that text, but he may have been    14 quoting the text himself, and I quoted that.</p> <p>15 Q Where did you get that quote then in Exhibit 4?    16 Do you recall?</p> <p>17 A I don't recall where I got it.</p> <p>18 Q Have you read the book How to be an Antiracist    19 by Ibram Kendi, portions of which are reflected    20 in Exhibit 50?</p> <p>21 A I have not, and I think I represented that    22 already.</p> <p>23 Q Before you were given Exhibit 50 moments ago,</p>	<p style="text-align: right;">151</p> <p>1 00006 that says on line 24 to line 25, "No pupil    2 in any public school shall be taught,    3 instructed, inculcated or compelled to express    4 belief in, or support for, any one or more of    5 the following." Do you see that language?</p> <p>6 A I do.</p> <p>7 Q So here I'm not talking about the four concepts    8 below. I just have some questions about that    9 specific phrase. So that's what I want to get    10 at.</p> <p>11 So is there written criteria that the    12 Department has that defines what it means to    13 teach, instruct, inculcate or compel to express    14 belief in or support for something?</p> <p>15 A I would need to make reference to other people    16 in the agency to get a more specific response to    17 that question.</p> <p>18 Q We have done that, in fairness, but I just want    19 to ask you are you aware of any written criteria    20 that defines those terms on page 00006 of    21 Exhibit 1, lines 24 to 25?</p> <p>22 A So I'm not familiar with them.</p> <p>23 Q So is there any written criteria that you're</p>
<p style="text-align: right;">150</p> <p>1 had you seen the language around the underlying    2 portions of Exhibit 50 before today?</p> <p>3 A So can you repeat that question?</p> <p>4 Q Could you read it back? See if I can do a    5 better job. I might not be able to.    6 (Requested portion read back by court reporter)</p> <p>7 A So to be precise, I've not seen the language in    8 the text of the book. I've seen the language    9 from other presentations made by Mr. Kendi, and    10 they are similar.</p> <p>11 Q They're similar. Did those other references    12 that you've seen of Dr. Kendi's quotes, did it    13 include contextual language like the contextual    14 language that surrounds the underlined quote on    15 page 19 of Exhibit 50?</p> <p>16 A I don't recall.</p> <p>17 Q I'm going to -- my notes are all over the place.    18 This is what happens when you bat cleanup. So    19 I'm going to come back to this, but I want to    20 probe a little bit more into your testimony with    21 respect to kind of what teaching means, and so    22 I'm going to direct your attention back to    23 Exhibit 1, and in particular the language on PL</p>	<p style="text-align: right;">152</p> <p>1 aware of in the Department that explains whether    2 or not a read-along would constitute teaching,    3 instructing, inculcating or compelling to    4 express a belief in?</p> <p>5 A I don't know the answer to that.</p> <p>6 Q You mentioned rhetorical devices as a possible    7 device that teachers may use. Is there any    8 criteria within the Department that explains    9 what rhetorical devices a teacher may use that    10 would or would not constitute teaching,    11 instructing, inculcating or compelling to    12 express a belief in?</p> <p>13 A So I'm not aware of that.</p> <p>14 Q Is there any criteria within the Department that    15 explains whether assigning a book to students to    16 read constitutes teaching, instructing,    17 inculcating or compelling to express a belief?</p> <p>18 A I would have to make reference to others in the    19 agency.</p> <p>20 Q Sitting here today, are you aware of any?</p> <p>21 A Am I aware of any? Could you repeat that?</p> <p>22 Q Could you just restate my last question?</p> <p>23 (Requested portion read back by court reporter)</p>

<p style="text-align: right;">153</p> <p>1 A So I would have to reach further into the agency 2 to determine that.</p> <p>3 Q But sitting here today, are you aware?</p> <p>4 A I'm not aware of what those might be.</p> <p>5 Q So now I want to go back to now Exhibit 50, and 6 I want you to just assume for, and I'm 7 referencing the underlying language on Exhibit 8 50 that's also in your OpEd. I want you to 9 assume that a teacher has taught, instructed, 10 inculcated that underlined language. If that's 11 true, would that underlined language fall under 12 any of the four concepts lines 26 to the next 13 page on line 3.</p> <p>14 MR. KENISON-MARVIN: I'll object to the 15 legal contention, and you can answer.</p> <p>16 A So I will start with the fact that it's not my 17 job, it's not within the purview of my 18 responsibility to adjudicate whether or not 19 certain actions by an educator would be some 20 type of an action under 193:40. So I can 21 speculate if that's where you want me to go.</p> <p>22 Q I would like you to speculate. How would you 23 speculate?</p>	<p>1 is kind of element one of the statute with 2 element 2 of the statute which is whether that 3 teaching, instruction or inculcating fits within 4 one of the four concepts. So what my question 5 is trying to do is assume that this would meet 6 the definition of teacher inculcate. So I'm 7 going to now reframe my question.</p> <p>8 If a teacher taught, instructed or 9 inculcated students along the lines of what's 10 been underlined on Exhibit 50 that you also 11 quote in your OpEd on Exhibit 4, would that fit 12 any of the four concepts that are listed at the 13 bottom of page 6 and go on to the beginning 14 of 07?</p> <p>15 MR. KENISON-MARVIN: I'll make the same 16 objection. Vagueness. Legal contention and 17 compound. And it represents the nature of the 18 first elements of the statute. You can answer.</p> <p>19 A So I think that it would be most clear in the 20 mind of an educator to determine whether or not 21 in teaching the text that you refer to in 22 Exhibit 50 if they are teaching that, one, a 23 group in this list of things is inherently</p>
<p style="text-align: right;">154</p> <p>1 A So the question then again is?</p> <p>2 Q The question then is if a teacher taught or 3 instructed, those two sentences that are 4 underlined on page 50, would it fall in your 5 view under any of the four concepts that are 6 listed on page 6 of Exhibit 1, line 26, to line 7 3 on page 7?</p> <p>8 A Am I allowed to write on this one?</p> <p>9 Q I can give you a copy.</p> <p>10 A I want to just go through and underline all the 11 principals and run each of them through my head.</p> <p>12 Q Please do. This can be your copy.</p> <p>13 A The question is with respect to this underlined 14 language in Exhibit 50?</p> <p>15 Q Um-hum.</p> <p>16 A So to your question, I think it would depend 17 upon the context of the instruction. The 18 content itself of Exhibit 50, again, content 19 being neutral, it's what you do with that 20 content.</p> <p>21 Q So my question is a little different, and I'll 22 explain why. So what I'm trying to do is parse 23 out teaching, instruction, and inculcating which</p>	<p>156</p> <p>1 superior, that one group is inherently racist, 2 that one group receives adverse treatment or 3 should receive adverse treatment and should be 4 discriminated against or receive adverse 5 treatment solely because of those 6 characteristics or that they cannot and should 7 not attempt to treat others without regard to 8 those items.</p> <p>9 So those are the four salient questions 10 that I think an educator would ask relative to 11 any content. Am I teaching that the inherent 12 superiority, the inherently racist, the adverse 13 treatment, and to not attempt to treat others 14 without regard to.</p> <p>15 Q I hear you. My question is a little different. 16 My question is would a teacher if they 17 taught that underlined language be teaching a 18 banned concept under the statute?</p> <p>19 A So there's not enough knowledge to know what the 20 question is. Is that teacher when they are 21 teaching this part of the context, are they 22 teaching that there is an inherently superior 23 group, an inherently racist, a group that should</p>

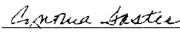
<p>157</p> <p>1 receive adverse treatment solely or probably 2 because of these characteristics or that they 3 cannot and should not attempt to be treated 4 without regard to these characteristics. So 5 that is really, you have to see the context of 6 what's taking place.</p> <p>7 Q Here though the context is, as I'm saying, they 8 are teaching or inculcating, that language 9 that's underlined. So my question is if they 10 are teaching or inculcating that principle that 11 is underlined, would that fit any of the 12 concepts?</p> <p>13 A So again, you'd have to have its bigger context. 14 Right? So you can't --</p> <p>15 Q I'm sorry. Go on.</p> <p>16 A You have to have the full context of what is 17 being discussed. I mean, in other words and I 18 think we ran into the same problem here. You're 19 constructing a hypothetical with one sentence 20 and that's not how instruction takes place.</p> <p>21 So you would have to put it in context and, 22 again, the individual who is doing the educating 23 would be very clear if they are inculcating or</p>	<p>159</p> <p>1 A My response would be to go to the statute, go to 2 the Q &amp; A which enumerates what you can and 3 can't do and ask yourself educator, am I 4 teaching, instructing or inculcating a student. 5 That seems very clear to the person who's doing 6 it that one's age, sex, gender, et cetera, is 7 inherently superior to another or that -- et 8 cetera. I don't want to --</p> <p>9 Q No, that's fine. Just reciting.</p> <p>10 A Exactly. I've done it a couple times. So this 11 is if you're an educator seems like very 12 straight forward that you would be able to just 13 look at these things. Is my instruction doing 14 that, and it's not, the concept here keeps 15 coming back to the content.</p> <p>16 Q Even with that, if an educator still had a 17 question and thought it was maybe a little bit 18 less clear than you seem to think it is, could 19 they come to you for advice with respect to how 20 to comply with HB 2?</p> <p>21 A So right now we're in the midst of a lawsuit 22 with HB 2. So most of the questions that we 23 would have would probably end up as a question</p>
<p>158</p> <p>1 teaching or instructing students that one's age, 2 sex, gender, et cetera, you know, is inherently 3 superior to another age, sex, gender or that an 4 individual by virtue of their age, sex, gender, 5 et cetera, is inherently racist or sexist or 6 oppressive or that an individual should be 7 discriminated against or receive adverse 8 treatment because of their age, sex, gender, et 9 cetera or that the people of one age, sex, 10 gender cannot and should not attempt to treat 11 others without regard to those things. So that 12 is the context that you need.</p> <p>13 Q So you can't answer the question without that 14 context; is that correct?</p> <p>15 A So what I say is I don't have any instruction in 16 New Hampshire that is one sentence long.</p> <p>17 Q What if a teacher had the very question I just 18 asked you, how would you respond to that 19 teacher? Can I teach page 19 of Exhibit 50. 20 Give me guidance. What would your response be?</p> <p>21 MR. KENISON-MARVIN: Objection.</p> <p>22 A I'm sorry. Did you --</p> <p>23 MR. KENISON-MARVIN: Objection. Vague.</p>	<p>160</p> <p>1 for perhaps the Human Rights Commission to 2 answer.</p> <p>3 Q Okay. Based on your quotation of Dr. Kendi in 4 your OpEd on Exhibit 4, do you think it would be 5 reasonable for an educator to think they 6 couldn't assign Dr. Kendi's book under HB 2?</p> <p>7 MR. KENISON-MARVIN: Objection.</p> <p>8 Speculation. You can answer.</p> <p>9 A So if they were to have reached that conclusion, 10 and I would have to speculate relative to that, 11 my observation really would be, one, that and 12 this is which exhibit? Let me get that right. 13 Let me get the right OpEd in front of me. Is 14 that they have not read the OpEd in its 15 totality. Because really the, if you look at 16 the rhetorical device associated with that, 17 there is a list of contradictory things the 18 paragraph before. Right? "For those who 19 promote Critical Race Theory or similar concepts 20 their thinking is not built on a foundation of 21 common sense, but on ideology, but on ideology 22 diametrically opposed to the truths found in our 23 Declaration of Independence, that we are all</p>

161	163
1 created equal."	1 is that while you think it's clear you're unable
2 And then I use another counter argument to 3 that, and then I present another argument. 4 "This idea of is, of course, in complete 5 opposition to the Equal Protection clause of the 6 Fourteenth Amendment to the US Constitution. As 7 Justice John Marshall Harlan stated in his 8 dissent of Plessy v. Ferguson, our Constitution 9 is color-blind and neither knows nor tolerates 10 classes among citizens."	2 to tell me whether if a teacher taught the 3 underlined language on Exhibit 4, you're unable 4 to tell me whether that's covered under HB 2 5 without context. Correct?
11 I then go on to elaborate. "And the 12 concepts of Critical Race Theory actually 13 contradict the very premises of the civil rights 14 movement and Dr. Martin Luther King himself." 15 And so what I would encourage my educators 16 to do if they were teaching this, so I myself 17 have used that contents, and I have used it in 18 the context of the Declaration of Independence 19 in the context of the Fourteenth Amendment, in 20 the context of Plessy v. Ferguson, in the 21 context of Martin Luther King so it seems to me 22 that the particular text that we're referring to 23 is quite rich in terms of the opportunity for	6 A So let me clarify. 7 MR. KENISON-MARVIN: Objection. Still 8 vague. 9 Q Please do. 10 A So then let me clarify. So my question answer 11 is that if a teacher were to ask me a question, 12 I would provide them with what we believe is a 13 large body of guidance for them to be able to 14 make a determination or not. 15 Q Is any of that guidance in the context of 16 specific books that they can or cannot teach 17 under the statute? 18 A So the premise to your question is about 19 content. 20 Q Yeah. 21 A And that's not, my law says no pupil in any 22 public school shall be taught, instructed, 23 inculcated relative to that one's sex, et
162	164
1 instruction of students.	1 cetera, is inherently superior, inherently
2 Q But I believe your prior testimony said if an 3 educator has questions about whether specific 4 instruction violates the statute they can't get 5 those answers from the DOE right now, it's 6 because of this litigation, is that your 7 position?	2 racist, received adverse treatment or cannot and 3 should not attempt to treat others without 4 regard. It's not content specific. So the 5 indicator should not be asking themselves what 6 is the content but what is the context of the 7 instruction that I'm providing to students.
8 A So if an educator comes to me, we provide 9 information to them, we provide guidance to 10 them, and that guidance includes a combination 11 of a Q & A document that we have published to 12 provide them specific guidance relative to that, 13 and it is specific reference to RSA 193:40, 14 prohibition of teaching of discrimination which 15 in my mind are quite clear in terms of 16 clarifying what can and can't happen.	8 Q But you agree with me that you cite content in 9 your OpEd, correct, in the form of Dr. Kendi's 10 book, right?
17 Our educators are professionally educated. 18 They mostly have master's degrees. And so I 19 don't think that the guidance that we are 20 providing to them is obscure to them or 21 unattainable in terms of understanding for 22 individuals who are highly educated. 23 Q That's true, but I believe your prior testimony	11 A I cite a number of pieces of content. I cite 12 the Declaration of Independence -- 13 Q Not my question. You cite Dr. Kendi as content, 14 correct? 15 A So my OpEd cites the Declaration of 16 Independence, it cites Dr. Kendi, it cites the 17 Fourteenth Amendment, it cites Plessy v. 18 Ferguson, it cites Dr. Martin Luther King. So 19 my OpEd has a number of citations in that 20 context. 21 Q Thank you. You cite Dr. Kendi as content, 22 correct? 23 A I have cited Dr. Kendi as content --

	165		167
1 Q	Thank you.	1	provided to a teacher if they were confused, the
2 A	-- in this OpEd.	2	Q & A from July 2021 and the statute? Is that
3 Q	All I'm asking. Not trying to trick you.	3	all you'd give them?
4	I'm going to refer you to Exhibit 9. After	4	MR. KENISON-MARVIN: Objection. Vague and
5	you've reviewed Exhibit 9, just let me know when	5	scope.
6	you're ready. Thank you.	6 A	And I believe pending this lawsuit that that
7	MR. KENISON-MARVIN: Gilles, I don't	7	would be the extent of the guidance that we
8	know what your plan is --	8	would provide to them.
9	MR. BISSONNETTE: I have five more minutes.	9 Q	So you wouldn't answer if they had a followup
10	MR. KENISON-MARVIN: Okay. 5.	10	question, is Dr. Kendi's book, if I teach it, is
11	MR. BISSONNETTE: Five more minutes from	11	that covered under the statute, you wouldn't be
12	when he says he's reviewed it.	12	able to answer that question?
13 A	So your question?	13	MR. KENISON-MARVIN: Objection. Vague.
14 Q	My question is this is an email between you and	14 A	So I would, and I would answer that question for
15	the President of AFT New Hampshire; is that	15	the educator principally by looking at the Q & A
16	correct?	16	but principally coming back to RSA 913:40, and I
17 A	That's correct.	17	would say are you teaching, inculcating, or are
18 Q	There's a line in here that says, this is the	18	you compelling to express a belief in or support
19	second part of a sentence, but I'm just trying	19	for any one or more of the following; that one's
20	to streamline things. We also want to reiterate	20	immutable characteristics are inherently
21	our offer to try to work through individual	21	superior, that an individual by virtue of these
22	circumstances that may be unclear to teachers.	22	immutable characteristics is inherently racist,
23	In these cases the best approach is for them to	23	sexist or oppressive or that an individual
	166		168
1	reach out directly and share the specific facts	1	should be discriminated against because of these
2	and circumstances so that we can provide them	2	immutable characteristics and that people cannot
3	with clear guidance.	3	and should not attempt to treat others without
4	Is that a reflection of the Department of	4	regard to these immutable characteristics, and I
5	Education's policy?	5	believe in that conversation with an educator
6 A	So I would hope that it is a reflection of the	6	given the highly educated state and status of
7	Department of Education's policy. I can tell	7	our educators that they would be able to
8	you that this email came together with input	8	understand that and apply that to their
9	from a variety of places within the agency to be	9	pedagogy.
10	able to support the educators at a time when I	10 Q	I'm asking for your opinion though.
11	believe there were either lawsuits or threats of	11 A	Yes.
12	lawsuits pending.	12 Q	What is your opinion as to whether or not those
13 Q	So if a teacher has questions about whether	13	two sentences in your OpEd fall under the four
14	specific instruction is covered by the law, they	14	concepts in Exhibit 1. I want to know what your
15	could come to the Department and work through	15	opinion is. Could you tell me that?
16	individual circumstances that may be unclear to	16 A	So I think I've made that clear that content is
17	them; is that still something that could occur	17	not what falls under the RSA 193:40. Behavior
18	today?	18	and how we treat other people including
19 A	Correct, and the guidance that we would provide	19	instructing, teaching, inculcating or compelling
20	them today would be in the form of a Q & A	20	to express belief in or support for, the fact of
21	guidance and questionnaire as well as reference	21	inherent superiority, inherently racist, receive
22	to the statute.	22	adverse treatment solely because of these
23 Q	Is that the only guidance that they would be	23	immutable characteristics or they cannot and

<p style="text-align: right;">169</p> <p>1 should not attempt to treat others without 2 regard to these immutable characteristics. So I 3 think that I've asked and answered that several 4 times now.</p> <p>5 Q I don't think you've answered it, but I'm going 6 to move on.</p> <p>7 A Okay.</p> <p>8 Q Exhibit 14?</p> <p>9 A Yes, I have it in front of me.</p> <p>10 Q There's a reference here if I could find it, and 11 I'm expediting this considerably. Topic Eight, 12 page 742 to 745. Do you see that? It's a 13 chapter of Tiffany Jewell's book, This Book is 14 Anti-Racist.</p> <p>15 A Okay.</p> <p>16 Q Do you see that chapter?</p> <p>17 A I do.</p> <p>18 Q Have you read it before?</p> <p>19 A I have.</p> <p>20 Q Did you read it to the Board of Education on 21 July 8th, 2021?</p> <p>22 A I believe I did. Or at least excerpts.</p> <p>23 Q Why did you read it to the Board on July 8th,</p>	<p style="text-align: right;">171</p> <p>1 attention, any other complaints about that book?</p> <p>2 A There may have been more than one. I don't 3 recall.</p> <p>4 Q Is that parent [REDACTED]?</p> <p>5 A I don't recall if it was her. I believe it was 6 in the Exeter School District.</p> <p>7 Q Given that you referenced that text during the 8 July 8, 2021, Board of Education meeting, if I 9 taught that chapter, if I'm a middle school 10 teacher in Exeter, would I be violating HB 2?</p> <p>11 MR. KENISON-MARVIN: Objection.</p> <p>12 A So that would depend on whether you are 13 teaching, instructing, inculcating or compelling 14 to express a belief in or support for any one or 15 more of the following. That one's age, sex, 16 gender identity, sexual orientation, et cetera, 17 are inherently superior to other, that they are 18 inherently racist, that they receive adverse 19 treatment solely or partly because of or that 20 they cannot or should not attempt to treat 21 others without regard to these immutable 22 characteristics.</p> <p>23 Q Besides reading that statue though, you can't</p>
<p style="text-align: right;">170</p> <p>1 2021?</p> <p>2 A Because I needed to make sure that the Board 3 understood some of the concerns that parents 4 were raising to the Department.</p> <p>5 Q Were those concerns justification for why HB 2 6 was necessary?</p> <p>7 MR. KENISON-MARVIN: Objection. Legal 8 contention.</p> <p>9 A Can you repeat the question?</p> <p>10 (Requested portion read back by court reporter)</p> <p>11 A So again, HB 2 or really it's RSA 193:40 in 12 particular I believe are helpful to ensure that 13 our teachers and our students in the State of 14 New Hampshire are not discriminated against.</p> <p>15 Q Are you aware of that chapter being used 16 anywhere in the State of New Hampshire in 17 school?</p> <p>18 A I believe it is. Or it was.</p> <p>19 Q What was your understanding at the time as to 20 how it was being used in New Hampshire?</p> <p>21 A I only know that a parent brought it to our 22 attention and said that it was being used.</p> <p>23 Q Besides that parent bringing it to your</p>	<p style="text-align: right;">172</p> <p>1 tell me whether if I taught that I'm violating 2 the law, right?</p> <p>3 A I would have to see how it's being used in this 4 context. When you say "if I taught that," there 5 is not a content standard. There is an activity 6 standard. So I would have to see it in this 7 context, and again, I think that the best person 8 to know if they're violating these statutes 9 really are the individuals who are actually 10 doing the teaching.</p> <p>11 Q But if I taught that chapter.</p> <p>12 A Um-hum.</p> <p>13 Q If I taught it.</p> <p>14 A Yes.</p> <p>15 Q You can't answer today whether I'd be violating 16 the statute --</p> <p>17 A Because I don't know what your -- 18 (Court reporter admonition - simultaneous talking)</p> <p>19 MR. KENISON-MARVIN: Objection. Stop.</p> <p>20 Stop. It's misstating what the statute says, 21 first of all, and second, I'm just going to 22 instruct him not to answer anymore. Let's talk 23 about if we have a basis to continue or not</p>

	173		175
1	because we've well over.	1	Sorry. I didn't understand the terminology. I
2	MR. BISSONNETTE: I'd like an answer to	2	appreciate that.
3	that, and I have one last question.	3	Just going through my note. I might be
4	MR. KENISON-MARVIN: Well, I'm going to	4	done.
5	instruct -- don't answer the question. We can	5	I'm introducing an exhibit and my question
6	talk about it. I do think that misrepresents	6	is just going to be whether you've seen it
7	what the statute says at least and the question	7	before.
8	is very vague the way it's asked right now. So	8	(Exhibit 51 marked for identification)
9	I'm happy to talk about it. If we want to do it	9	I don't think I've seen this before.
10	outside of the witness's presence, I can tell	10	Do you recall ever speaking to the Northwood
11	you specifically my problem is, but we're well	11	GOP?
12	over. I'm happy to talk about how we're going	12	MR. KENISON-MARVIN: Objection. Vague.
13	to proceed from this moment, but I've been	13	Can you put a time frame on that?
14	pretty liberal in allowing this to go on beyond	14	November 2021.
15	our agreed time, and I'm happy to talk about	15	I don't recall that. I have spoken to the
16	continuing to keep questions on the table. I	16	Northwood GOP years ago.
17	just, think we need to slow down here and talk	17	This would be to refresh your recollection. So
18	about where we're at and where we're going.	18	I've just marked as Exhibit 52 an email.
19	MR. BISSONNETTE: Off the record.	19	(Exhibit 52 marked for identification)
20	(Discussion off the record)	20	Does Exhibit 52 refresh your recollection as to
21	(Recess taken 3:20 - 3:25 p.m.)	21	whether or not you've ever spoken to the
22	(Requested portion read back by court reporter)	22	Northwood GOP?
23	MR. BISSONNETTE: Strike that. I'm going	23	So it refreshes my recollection that I was
	174		176
1	to withdraw the question.	1	invited. I don't recall if I ever went out and
2	Q Can you identify, Commissioner, an incident of	2	spoke to them or not. I don't have recollection
3	instruction that occurred in New Hampshire	3	of that. I do speak to many groups though.
4	before HB 2 that would violate HB 2 had it been	4	You've spoken to political groups before, fair
5	in effect at the time the instruction occurred?	5	to say?
6	MR. KENISON-MARVIN: Objection. Vague.	6	I speak to all kinds of groups.
7	Calls for legal contention.	7	I know. I get that. I'm just asking political
8	A I'm not familiar with any.	8	groups. Have you spoken to political groups
9	Q The Exploring Whiteness syllabus that's on	9	before?
10	Exhibit 14, Topic Ten. I just wanted you to	10	All kinds of groups.
11	describe to me --	11	Which includes political groups, correct?
12	A Just give me the page.	12	That would include political groups.
13	Q Yes, of course. It's page 749, Topic Ten, of	13	And in those political groups, have you
14	Exhibit 14.	14	referenced HB 2 before?
15	A Okay.	15	I may have answered a question on it or have
16	Q Do you have the context of this class? I	16	spoken about various aspects of education.
17	believe it was in Hanover.	17	You ever speak about why it was necessary in
18	A I believe it was in Hanover, and I believe it	18	those group meetings?
19	was an elective class that students signed up	19	I don't have any specific recollection of the
20	for in a specials week that they have.	20	type of content that I would have shared on
21	Q Was it a class that students were required to go	21	that.
22	to; do you know?	22	Okay.
23	A I think I indicated it was an elective class.	23	MR. BISSONNETTE: We'll all reserve,

<p style="text-align: right;">177</p> <p>1 obviously, and I want to thank the Commissioner 2 for his time. Thank you, Elizabeth. Thank you, 3 Nate, and thank you, Cindy, very much.</p> <p>4 MR. KENISON-MARVIN: I want to speak with 5 the Commissioner briefly about any areas for 6 followup before we recess for the day. Give me 7 five minutes.</p> <p>8 (Recess taken 3:30 - 3:40 p.m.)</p> <p>9 MR. KENISON-MARVIN: We don't have any 10 questions for the witness, and I just want to 11 reserve our right to read and sign the 12 transcript.</p> <p>13 MR. BISSONNETTE: We'll reserve as well, 14 and just thank you everyone very much.</p> <p>15 (Deposition suspended at 3:40 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">179</p> <p>1 C E R T I F I C A T E 2 I, Cynthia Foster, Registered Professional 3 Reporter and Licensed Court Reporter, duly authorized 4 to practice Shorthand Court Reporting in the State of 5 New Hampshire, hereby certify that the foregoing 6 pages, numbered 7 through 177, are a true and 7 accurate transcription of my stenographic notes of 8 the deposition of FRANK EDELBLUT who was first duly 9 sworn by me on May 23, 2023, for use in the matter 10 indicated on the title sheet, as to which a 11 transcript was duly ordered;</p> <p>12 I further certify that I am neither 13 attorney nor counsel for, nor related to or employed 14 by any of the parties to the action in which this 15 transcript was produced, and further that I am not a 16 relative or employee of any attorney or counsel 17 employed in this case, nor am I financially 18 interested in this action.</p> <p>19</p> <p>20</p> <p>21  Cynthia Foster, LCR</p> <p>22</p> <p>23</p>
<p style="text-align: right;">178</p> <p>1 I have carefully read the foregoing 2 deposition, and the answers made by me are true.</p> <p>3</p> <p>4</p> <p>5 <u>FRANK EDELBLUT</u></p> <p>6</p> <p>7</p> <p>8 STATE OF _____ 9 _____, SS.</p> <p>10</p> <p>11 At _____ on the 12 day of _____ A.D. 13 2023, personally appeared the above-named FRANK 14 EDELBLUT and made oath that the foregoing answers 15 subscribed by him are true.</p> <p>16 Before me,</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Notary Public</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">180</p> <p>1 E R R A T A 2 I, the undersigned, FRANK EDELBLUT, have read 3 the transcript of my deposition held on May 23, 2023, 4 in the matter of Local 8027, AFT-New Hampshire, 5 AFL-CIO v. Frank Edelblut, Commissioner, et al; and 6 the same is true and correct, to the best of my 7 knowledge, with the exception of the following 8 changes noted below, if any: 9</p> <p>10 PAGE/LINE CORRECTION AND REASON FOR CORRECTION</p> <p>11 _____ 12 _____ 13 _____ 14 STATE OF _____ ) 15 COUNTY OF _____ ) 16 Subscribed and sworn to before me this _____ day 17 of _____, 2023. 18 19 _____ 20 Notary Public 21 My commission expires: 22 _____ 23</p>



1 I have carefully read the foregoing  
2 deposition, and the answers made by me are  
3 true.<sup>1</sup>

4   
5 FRANK EDEBLUT

6

7 STATE OF New Hampshire

8 \_\_\_\_\_, ss.

9

10

11 At 25 Hall St, Concord on the  
12 29 day of June A.D.

13 2023, personally appeared the above-named FRANK  
14 EDEBLUT and made oath that the foregoing answers  
15 subscribed by him are true.

16 Before me,



17

18

19 Angela M. Adams  
20 Notary Public

21

22 <sup>1</sup> Subject to the exception of the changes identified in the accompanying errata sheet and the  
23 attachment thereto.

1

## ERRATA

2

I, the undersigned, FRANK EDELBLUT, have read  
the transcript of my deposition held on May 23, 2023,  
in the matter of Local 8027, AFT-New Hampshire,  
AFL-CIO v. Frank Edelblut, Commissioner, et al; and  
the same is true and correct, to the best of my  
knowledge, with the exception of the following  
changes noted below, if any:

6

## PAGE/LINE CORRECTION AND REASON FOR CORRECTION

7

P9 / L10 See attachment

8

P15 / L3 See attachment

9

P16 / L17 See attachment

10

See attached sheet(s) for additional information:

11

Yes  No

12



FRANK EDELBLUT

13

14

STATE OF NH )  
) ss.:

15

COUNTY OF Merrimack

16

Subscribed and sworn to before me this 29 day  
of June, 2023.

17

18

My commission expires:

19

May 31, 2028

20

  
Notary Public

21

22



23

Local 8027, AFT-New Hampshire, et al. v. Frank Edelblut, Commissioner, et al. (No. 1:21-cv-01077-PB)

FRANK EDELBLUT

## ERRATA SHEET

### ATTACHMENT

Page 9, Line 10, Change:

Replace “party” with “matter” such that the transcript states:

“I was deposed many, many years ago in another matter associated with a corporation.”

Reason: Transcription error.

Page 15, Line 3, Change:

Replace “counsel” with “Council” such that the transcript states:

“I’m nominated, and then I go through a confirmation process with the Governor and Council.”

Reason: Transcription error.

Page 16, Line 17, Change:

Replace “RSA 21:10” with “RSA 21-N” such that the transcript states:

“Particularly in RSA 21-N I believe is the statute.”

Reason: Transcription error.

*[intentionally blank; continued on next page]*

Page 40, Lines 16–17, Change:

After “We do” add “have a periodic meeting”;  
Before “That would be incorrect” add “But”; and  
After “That would be incorrect” add “to characterize it as a ‘committee’”

With these changes, the transcript states:

“We do have a periodic meeting. But that would be incorrect to characterize it as a ‘committee.’ It’s not a committee.”

Reason: To clarify testimony.

Page 47, Line 22, Change:

After “Yes” add “, I agree with the objection that the question is vague, but I will try to answer it” such that the transcript states:

“Yes, I agree with the objection that the question is vague, but I will try to answer it. So with respect to this particular complaint, my recollection is that the direction we took was not concern over a specific piece of content so much as it was the Sora app and what students may or may not be able to access using that particular application and whether schools had configured correct security parameters in that application to prevent students from accessing content that may not be developmentally appropriate for them.”

Reason: To clarify testimony.

Page 49, Line 21, Change:

Replace “times” with “types” such that the transcript states:

“I believe in this case that those types of controls had not been configured.”

Reason: Transcription error.

*[intentionally blank; continued on next page]*

Page 133, Line 20, Change:

After “Yes” add “, I understand.” such that the transcript states:

“Yes, **I understand.** I have no recollection of seeing either of these.”

Reason: To clarify testimony.

Page 161, Line 17, Change:

Replace “contents” with “content” such that the transcript states:

“And so what I would encourage my educators to do if they were teaching this, so I myself have used that **content**, and I have used it in the context of the Declaration of Independence in the context of the Fourteenth Amendment, in the context of Plessy v. Ferguson, in the context of Martin Luther King so it seems to me that the particular text that we’re referring to is quite rich in terms of the opportunity for instruction of students.”

Reason: Transcription error.

Page 164, Line 5, Change:

Replace “indicator” with “educator” such that the transcript states:

“So the **educator** should not be asking themselves what is the content but what is the context of the instruction that I’m providing to students.”

Reason: Transcription error.

*[end]*